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402.907
Sup. Ct.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 291

EQUITABLE LIFE INSURANCE COMPANY OF IOWA, PETITIONER,

vs.

HALSEY, STUART & CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 31, 1940.

CERTIORARI GRANTED OCTOBER 14, 1940.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. .....

EQUITABLE LIFE INSURANCE COMPANY OF IOWA,

Petitioner,

vs.

HALSEY, STUART & CO., A CORPORATION,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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IN THE

United States Circuit Court of Appeals

For the Seventh Circuit

No. 7032

EQUITABLE LIFE INSURANCE COMPANY OF IOWA,

Plaintiff-Appellee,

vs.

HALSEY, STUART & CO., A CORPORATION,

Defendant-Appellant.

Counsel for Defendant-Appellant:
EDWARD R. JOHNSTON.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

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1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable John P. Barnes, District Judge of the United States for the Northern District of Illinois on Twenty-First day of April, in the year of our Lord one thousand nine hundred and Thirty-Nine, being one of the days of the regular April Term of said Court, begun Monday, the Third day of April, and of our Independence the 163rd year. Placita.

Present:

Honorable John P. Barnes, District Judge.
William H. McDonnell, U. S. Marshal.
Hoyt King, Clerk.

Filed Apr. 10, 1935.

2 IN THE DISTRICT COURT OF THE UNITED STATES,

Northern District of Illinois,

Eastern Division.

Equitable Life Insurance Company of Iowa,
vs.
Halsey-Stuart & Company, Incorporated. } No. 44353.

Be It Remembered, that the above-entitled action was commenced by the filing of the following Complaint in the above-entitled cause, in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the Tenth day of April, A. D. 1935.

3 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—44353) * *

To the Judges of the District Court of the United States, for the Northern District of Illinois, Eastern Division:

Equitable Life Insurance Company of Iowa, a corporation, plaintiff, by Gamble, Read & Howland and Montgomery, Hart, Pritchard & Herriott, its attorneys, complaining of Halsey-Stuart & Company, Incorporated, a corporation, defendant, alleges:

1. That plaintiff is a corporation organized and existing under the laws of the State of Iowa, with its home office and principal place of business in the City of Des Moines, County of Polk, and State of Iowa, and that it is engaged in the business of insuring lives, issuance of annuity contracts, and in other phases of the life insurance business.

2. That defendant is a corporation duly organized and existing under the laws of the State of Illinois, with its principal place of business located in the City of Chicago, County of Cook and State of Illinois, in the district aforesaid, and that said defendant is now, and at all times hereinafter referred to has been, engaged in the business of buying, selling and dealing in stocks, bonds and other securities issued by private corporations and by states and subdivisions thereof, including municipalities.

4 3. That plaintiff is a non-resident of the State of Illinois, and that defendant is a resident of the

State of Illinois. That this is a suit of a civil nature, and that there is involved herein a sum in excess of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs, and that, therefore, this court has jurisdiction of the parties and the subject-matter hereof.

4. That plaintiff for more than ten (10) years last past customarily invested a portion of its policy reserves and other funds in state, county and municipal bonds and other securities made eligible for the investment of life insurance company funds by the laws of the State of Iowa. That prior to the purchase of the bonds hereinafter mentioned, plaintiff had purchased from defendant large amounts of municipal, state, county and school district bonds and securities. That all of said purchases of securities, including the purchase of certain bonds known as "Longview Local Improvement District Bonds," hereinafter more particularly described, were made by plaintiff purely for investment and for the purpose of earning interest upon the policy reserves of plaintiff, and not for speculation or resale, and that all of said purchases were made with the expectation that the securities purchased would be held by plaintiff until the maturity thereof. And plaintiff alleges that defendant and its officers, agents and representatives were at all times well aware that the securities purchased from time to time by plaintiff from defendant were purchased for investment purposes, as above set forth, and that at the time of the purchase by plaintiff from defendant of the certain aforesaid Longview Local Improvement District Bonds hereinafter described, defendant well knew that such purchases were made solely for said purpose.

5 That defendant and its officers, agents and representatives were at all times hereinafter mentioned well aware that under the laws of the State of Iowa the unsecured obligations of a private corporation were not eligible for investment of life insurance company funds, and with such knowledge said defendant solicited the purchase of said certain bonds known as "Longview Local Improvement District Bonds" by the plaintiff at the times hereinafter set forth, and represented said bonds to be municipal bonds of the type made eligible for investment of life insurance company funds by the laws of Iowa.

5. That the Long-Bell Lumber Company, hereinafter described, was at all times herein referred to, and is now, a corporation organized under the laws of the State of

Missouri, engaged in various phases of the lumber business, with its principal place of business at Kansas City, Missouri. That said Long-Bell Lumber Company was at all times herein referred to a producer of lumber and forest products, and that in connection with the development of its lumbering operations in the states of Washington and Oregon said Long-Bell Lumber Company caused to be organized and incorporated the City of Longview in the County of Cowlitz, State of Washington. That in addition to the lumbering operations carried on by said Long-Bell Lumber Company, it was engaged in the promotion and sale of real estate within said City of Longview, Washington, by means of certain wholly controlled subsidiary corporations, among which were corporations known as the Longview Company and the Longview Suburban Company, both of which were corporations organized for the purpose of subdividing and reselling extensive tracts and parcels of real estate located in said City of Longview, or in close proximity thereto, but that the extent of such additional operations were not known to the plaintiff at the times it purchased the Longview Local Improvement District Bonds hereinafter described.

6. That at the time of the organization of said City of Longview, Washington, and at all times herein referred to, the Long-Bell Lumber Company, by direct ownership and by means of said subsidiary corporations, owned or controlled a very substantial portion of the real estate located within the limits of said City of Longview, and that various public improvements were caused to be constructed by the City of Longview for the purpose of improving such real estate holdings of the Long-Bell Lumber Company, the Longview Company and Longview Suburban Company. That said improvements consisted of paving, sidewalks, curbs, sanitary and storm sewers, graveling, grading, and other similar local improvements. That under the laws of the State of Washington incorporated cities are authorized and empowered to create local improvement districts, consisting of property which is benefited by the construction of local public improvements; that the cost of constructing such improvements is borne by special improvement assessments levied upon the property in the various improvement districts in accordance with the benefits received, and that bonds are issued in anticipation of revenues to be realized from said assessments. That during the years 1925, 1926 and 1927

the City of Longview caused to be created certain local improvement districts within the corporate limits of said city, more specifically designated and described as follows:

7 Local Improvement District No. 1—Paving, sidewalk and curb, Kessler Boulevard.

Local Improvement District No. 2—Paving, sidewalk and curb, Washington Way, Maple Street, and other streets.

Local Improvement District No. 3—Paving, sidewalk and curb, Oregon Way and other streets.

Local Improvement District No. 4—Paving, sidewalk and curb, Nichols Blvd., and other streets.

Local Improvement District No. 5—Paving, sidewalk and curb, Nichols Blvd. and other streets.

Local Improvement District No. 6—Paving, sidewalk and curb, Oregon Way and other streets.

Local Improvement District No. 7—Graveling, grading and otherwise improving Douglas Street and other streets.

Local Improvement District No. 11—For a system of sanitary and storm sewers, including the whole City of Longview.

Local Improvement District No. 12—Sewer, Alabama Street and other streets.

Local Improvement District No. 17—Paving Seventh Avenue and other streets.

Local Improvement District No. 18—Paving Fifteenth Avenue and other streets.

Local Improvement District No. 19—Cowlitz River improvement and paving California Way, including the entire City of Longview.

Local Improvement District No. 20—Improvement of California Way to Columbia Way by paving.

7. That more than seventy per cent (70%) in value as measured by said assessments of the real estate located within the local improvement districts of the City of Longview above described was owned by the said Long-Bell Lumber Company, or by its wholly controlled subsidiary corporations. That a very large portion
8 of said real estate consisted only of vacant lots and unimproved lands and acreage property, all of which facts were well known to defendant and its officers at the time of the sale by defendant to plaintiff of the bonds hereinafter described, but which facts were not known to plaintiff or its officers.

8. That defendant for more than ten years last past,

and at all times referred to in this complaint, has been and still is fiscal agent and banker for the Long-Bell Lumber Company, and certain of its associated and subsidiary corporations, and that the plaintiff, at the times it purchased from the defendant the Longview Local Improvement District Bonds hereinafter referred to and hereinafter described, knew that the defendant was acting as such fiscal agent and banker for the said Long-Bell Lumber Company. That defendant, as head of certain bond syndicates, and as a dealer in securities, had, prior to the dates hereinafter referred to, marketed and sold to investors throughout the United States bonds of the Long-Bell Lumber Company aggregating more than Twenty-five Million Five Hundred Thousand ($25,500,000.00) Dollars. That in addition to the sale of said mortgage bonds of the Long-Bell Lumber Company, and for the purpose of financing some of the operations of the Long-Bell Lumber Company and its subsidiary corporations, the defendant, prior to the dates hereinafter referred to, and without the knowledge of the plaintiff, purchased of the Long-Bell Lumber Company or its subsidiary corporations and sold to the general public, bonds aggregating more than three million dollars par value issued by a certain diking district known as Consolidated Diking District No. 1 of Cowlitz County, Washington, all of the real property within the corporate limits of the
9 City of Longview, Washington being embraced in and comprising a large portion of said diking district, and that by reason of said defendant having marketed and sold said Consolidated Diking District No. 1 of Cowlitz County, Washington bonds the defendant and its officers and agents at all of the times hereinafter referred to, were fully informed and well knew that bonds of said Consolidated Diking District No. 1 of Cowlitz County, Washington were outstanding in large amounts, and that large and burdensome assessments for the payment of said bonds for said last mentioned Diking District had been levied against all of the real property embraced within the various local improvement districts of said City of Longview, Washington.

9. That defendant and its officers, at all of the times hereinafter referred to, well knew the business carried on by the Long-Bell Lumber Company and its subsidiary corporations, and the financial condition of said Long-Bell Lumber Company, including the amounts of its outstanding indebtedness, the encumbrances upon its prop-

erty and the property of its subsidiaries, and the amount and value of its unencumbered assets, as well as the amounts of various assessments and bond issues issued against said assessments, the payment of which constituted a charge and lien upon the real estate embraced within the said City of Longview, Washington.

10. That in connection with the construction of the improvements contemplated in the various local improvement districts numbers 1 to 20 inclusive created by the City of Longview, Washington, as described in paragraph 6 of this complaint, the said City of Longview, Washington caused to be issued certain bonds of the total par value of Three Million One Hundred Forty-nine Thousand Seven Hundred Twenty-six Dollars Sixty-five Cents ($3,149,726.65) for the purpose of defraying the cost of constructing said contemplated improvements in said improvement districts, which said bonds became and were a charge upon the various parcels of real estate included and embraced within the said improvement districts, all of which said real estate was likewise included and embraced within the aforementioned Consolidated Diking District Number 1 of Cowlitz County, Washington, which latter fact, although known to the defendant, was not known to the plaintiff at the time of its purchase of said Longview Local Improvement District bonds hereinbefore mentioned and hereinafter described; that the defendant, as the fiscal agent and banker of said Long-Bell Lumber Company, and in connection with the financing of the operations of said company and its subsidiaries, undertook to market all of said Longview Local Improvement District bonds last hereinbefore mentioned. That said Longview Local Improvement District bonds, at the time of their issuance and sale, were guaranteed as to payment of principal and interest by the said Long-Bell Lumber Company.

11. That defendant, at divers times, as hereinafter more particularly set forth, bargained with plaintiff, at defendant's request, to sell, and did sell to plaintiff, certain of said Longview Local Improvement District Bonds at the dates, and in the amounts, and for the purchase prices hereinafter set forth, to-wit:

On the 21st day of May, 1930, defendant sold to plaintiff Eighty-five Thousand ($85,000.00) Dollars par value of said Longview Local Improvement District Bonds, as follows:

District No.	Serial Nos.	Par Value
1	207 to 216, Inc.—308	$ 11,000
7	49 to 53, inc..	5,000
12	94 to 96, inc..	
	114 to 118, inc.	
	140 to 144, inc..	13,000
17	14 to 18, inc.	
	20 to 22, inc.	8,000
18	32 and 35	2,000
19	260, 262, and 264 and 320	4,000
	326 to 336, inc.	11,000
	344 to 347, inc.	4,000
	419 to 442, inc.	24,000
	444 to 446, inc.	3,000
		$ 85,000

for the price of Eighty-four Thousand Seven Hundred Eighty-seven Dollars Fifty Cents ($84,787.50), which amount plaintiff then and there paid to defendant.

That on the 12th day of June, 1930, defendant sold to plaintiff Fifteen Thousand ($15,000.00) Dollars par value of said Longview Local Improvement District Bonds, as follows:

District No.	Serial No.	Par Value
1	314-343 to 346, inc.	$ 5,000
	355 to 357, inc.	3,000
	376 and 377	2,000
	395 to 397, inc.	3,000
19	313	1,000
20	10	1,000
		$ 15,000

for the price of Fourteen Thousand Nine Hundred Sixty-two Dollars Fifty Cents ($14,962.50), which amount plaintiff then and there paid to defendant.

That on the 29th day of September, 1930, defendant sold to plaintiff Twenty-six Thousand ($26,000.00) Dollars par value of said Longview Local Improvement District Bonds, as follows:

District No.	Serial Nos.	Par Value
1	272-273	$ 2,000
7	102	1,000
11	839-840	2,000
	902 to 904, inc.	3,000
	620	1,000
	841 to 843, inc.	3,000
	905 and 906	2,000
12	107 to 109, inc.	3,000
19	294 to 297, inc.	4,000
	414 to 418, inc.	5,000
		$ 26,000

for the price of Twenty-five Thousand Nine Hundred Thirty-five ($25,935.00) Dollars, which amount plaintiff then and there paid to defendant.

That on the 10th day of October, 1930, defendant sold to plaintiff Nine Thousand ($9,000.00) Dollars par value of said Longview Local Improvement District Bonds, as follows:

District No.	Serial Nos.	Par Value
1	337 to 340, inc. and 390	$ 5,000
18	26-33-34	3,000
20	5	1,000
		$ 9,000

for the price of Eight Thousand Nine Hundred Seventy-seven Dollars Fifty Cents ($8,977.50), which amount plaintiff then and there paid to defendant.

That on the 29th day of October, 1930, defendant sold to plaintiff Two Hundred Thousand ($200,000.00) Dollars par value of said Longview Local Improvement District Bonds, as follows:

District No.	Serial Nos.	Par Value
11	367 to 408, inc.	$ 42,000
	455 to 504, inc.	50,000
	546 to 595, inc.	50,000
	637 to 661, inc.	25,000
	664 to 686, inc.	23,000
	688 to 693, inc.	6,000
	697 to 700, inc.	4,000
		$200,000

for the price of One Hundred Ninety-nine Thousand Five Hundred ($199,500.00) Dollars, which amount plain-
13 tiff then and there paid to defendant.

That on the 30th day of October, 1930, defendant sold to plaintiff Two Thousand ($2,000.00) Dollars par value of said Longview Local Improvement District Bonds, as follows:

District No.	Serial Nos.	Par Value
11	662 and 663	$ 2,000

for the price of One Thousand Nine Hundred Ninety-five ($1,995.00) Dollars, which amount plaintiff then and there paid to defendant.

12. That plaintiff subsequently, at the request of defendant, exchanged with defendant certain of said Longview Local Improvement District Bonds previously purchased by plaintiff from defendant for other similar bonds, to-wit:

On the 13th day of February, 1931, plaintiff so exchanged with defendant Thirteen Thousand ($13,000.00) Dollars par value of said bonds, being District No. 9 Bonds, Nos. 419 to 431, inclusive, for District No. 1 Bond No. 391, District No. 6 Bond No. 60, District No. 11 Bonds Nos. 745 to 748, inclusive, and Bonds 751 and 752, District No. 12 Bond No. 196, and District No. 19 Bonds Nos. 257, 406, 407, and 408; and likewise, on the 11th day of March, 1931, plaintiff so exchanged with defendant Three Thousand ($3,000.00) Dollars par value of said bonds, being District No. 17 Bonds Nos. 20, 21, and 22 for District No. 1 Bonds Nos. 392, 393, and 394.

13. That since the purchase of the City of Longview Local Improvement District Bonds by plaintiff from defendant, the following numbered Bonds in the Districts specified have been paid and retired from the proceeds of special assessments by the City Treasurer of said City of Longview, Washington:

14 District No. 1, Bonds 207 to 212, inclusive;
District No. 6, Bond No. 60;
District No. 7, Bonds 49 to 53, inclusive;
District No. 11, Bonds 367 to 383, inclusive; and
District No. 20, Bond No. 5.

That the balance of said Longview Local Improvement District Bonds purchased by the plaintiff from defendant, amounting to Three Hundred Eight Thousand Dollars ($308,000.00) par value, are still owned and held by plaintiff, and that the same, other than the bonds of Local Improvement District No. 12 hereinbefore described, are all in default as to payment of interest.

14. That defendant, for the purpose of inducing plain-

tiff to purchase said bonds, then and there, and prior to the purchases thereof by plaintiff, wilfully, maliciously, fraudulently and falsely represented to plaintiff, to-wit:

That the City of Longview, Washington, because of its natural advantages and proximity to the timber stands of the Long-Bell Lumber Company and of the Weyerhaeuser interests (referring thereby to the Weyerhaeuser Timber Company and its allied and subsidiary corporations which constitute the world's largest producer of lumber and forest products), had been selected as the site for the vast lumber manufacturing plants of both of said companies, and that manufacturing and industrial plants had also been erected at Longview by the Longview Concrete Pipe Company, the Pacific Straw Paper & Board Company, the Magor Car Corporation, The Standard Oil Company, the Longview Paint & Varnish Company, Central Mill Works, and by the Longview Fibre Company.

That the City of Longview had a frontage of seven and one-quarter miles upon the Columbia River, and that said City of Longview, Washington, was a port of call for ocean-going vessels midway between Portland and the Pacific Ocean.

That the City of Longview had no funded debt, other than the City of Longview Local Improvement District Bonds, which constituted a charge or lien upon the lands and property included within the various Local Improvement Districts of the City of Longview, and which comprised the security for said Longview Local Improvement District Bonds sold to plaintiff.

15. That defendant likewise, for the purpose of inducing plaintiff to purchase said bonds, wilfully, maliciously, fraudulently and falsely concealed from plaintiff prior to the purchase of said bonds the fact that more than seventy per cent (70%) in value as measured by said assessments of the real estate located within said local improvement districts of the City of Longview was owned by the Long-Bell Lumber Company, or by its wholly controlled subsidiary corporations, and that a very large portion of said real estate consisted only of vacant lots and unimproved lands and acreage property, and therefore that a very large part of the security for said bonds was in fact only the security of the guaranty of the said Long-Bell Lumber Company.

16. That said defendant likewise, for the purpose of inducing the plaintiff to purchase the aforesaid bonds, wilfully, maliciously, fraudulently and falsely concealed

from the plaintiff, prior to the purchase of said bonds, the fact that the Long-Bell Lumber Company was then in serious financial difficulty. That loans due by it to commercial banks in excess of one million dollars had been called for payment and that as a condition to future credit said banks, from which it had been borrowing for years, required the transfer by said Long-Bell Lumber Company of all of its free and unencumbered assets of a liquid character including cash, accounts receivable, inventories, and other property, to a certain corporation to be organized, the capital stock of which should be wholly owned by said Long-Bell Lumber Company, and that the credit of said Long-Bell Lumber Company was not only seriously impaired, but that it could not secure any further extension of credit theretofore granted unless such transfer of its unencumbered assets was accomplished to such new or proposed corporation, to whom such extension of credit was then to be granted, and that by reason of such facts, the security for the payment of said bonds, being in large measure dependent on the financial ability of said Long-Bell Lumber Company as the owner either directly or through its subsidiary corporations of a major portion of properties securing the payment of said bonds, was seriously impaired, both as to principal and interest, that said defendant, having made representations with respect to said Long-Bell Lumber Company, was obligated to and should have disclosed to the plaintiff the true financial condition of said Long-Bell Lumber Company, but, as above stated, falsely, fraudulently, wilfully, and maliciously failed so to do.

17. That defendant likewise well knew at the time it induced plaintiff to purchase the aforesaid bonds that because of the financial difficulties of said Long-Bell Lumber Company the City of Longview and the residents thereof, including the owners of the balance of the property securing the payment of said bonds, would be seriously and adversely affected by said financial difficulties of the Long-Bell Lumber Company, and that as a result a default in the payment of the bonds secured by property owned by others than said Long-Bell Lumber Company would be very likely to occur, but defendant wilfully and maliciously and with intent to defraud the plaintiff, concealed said facts from plaintiff.

18. That plaintiff, relying solely upon the representations of defendant as aforesaid, and without independent investigation on its own part, purchased

from defendant, at the times and places hereinabove set forth, said Longview Local Improvement District Bonds of the par value of Three Hundred Thirty-seven Thousand ($337,000.00) Dollars, and then and there, in payment thereof, paid to defendant the sum of Three Hundred Thirty-six Thousand One Hundred Fifty-seven Dollars Fifty Cents ($336,157.50).

19. That at all of the times hereinabove referred to, as was well known to the defendant and its officers, the said City of Longview did not include within its corporate limits any frontage on the Columbia River, and there was no river frontage or dock frontage located within the limits of any of the aforesaid Longview Local Improvement Districts; and none of the plants of Long-Bell Lumber Company or the Weyerhaeuser interests, or any plants of any of the other aforesaid industrial organizations referred to by defendant were located within the corporate limits of said City of Longview, Washington, nor within the boundaries of any of the aforesaid Longview Local Improvement Districts, and none of the plants of any of the aforesaid companies were in any manner subject to the payment of special assessments of any of said Longview Local Improvement Districts; and that also as was well known to the defendant, there was outstanding at the time of the purchase by plaintiff of the aforesaid Longview Local Improvement District Bonds a large issue of other bonds, to-wit, over Two and One-half Million ($2,500,000.00) Dollars par value of bonds issued by Consolidated Diking District No. 1 of Cowlitz County, Washington, hereinabove mentioned,
18 which said Diking District Bonds had theretofore been sold by the defendant, and that under the laws of the State of Washington, assessments out of which said Consolidated Diking District Bonds were payable were a lien upon all of the property located within the corporate limits of the City of Longview, Washington, including all of the property located within all of the various local improvement districts of said city hereinabove described, and that the lien of said Consolidated Diking District Bonds was either a lien on a parity with the lien of the Longview Local Improvement District Bonds purchased by plaintiff from defendant, or, as is claimed now by the owners of said Consolidated Diking District Bonds, was a prior lien to the Longview Local Improvement District Bonds; that in either event, as plaintiff is informed and believes, and therefore avers,

if any holder of Longview Local Improvement District Bonds, including the plaintiff, should seek to bring about a foreclosure of the lien of said bonds, or to cause the property securing the same to be sold for the satisfaction and payment of said bonds, said property must be sold subject to the lien of the said Consolidated Diking District Bonds.

20. That a large portion of the real estate included within said local improvement districts was unimproved property owned by the Longview Company or the Longview Suburban Company, subsidiary corporations of the Long-Bell Lumber Company, and that in the majority of instances where assessments were levied against unimproved real estate included within such local improvement districts, the unpaid Diking District assessments and the unpaid local improvement district assessments largely
19 exceeded the actual value of said real estate. That in many instances the actual value of the real estate included within said local improvement districts was less than the combined liens of the Diking District assessment and the local improvement district assessments all of which facts were well known to defendant and its officers, and were by them concealed from plaintiff.

21. That defendant and its officers well knew all of the facts above set forth with respect to the issue of said bonds of Cowlitz County Diking District No. 1, and the number of said bonds that were outstanding on the dates of the respective purchases by plaintiff from defendant of said local improvement district bonds. That defendant and its officers well knew that over Two and One-half Million ($2,500,000.00) Dollars par value of said bonds were outstanding at the date of the transactions with plaintiff above set forth, and that the assessments out of which said Diking District Bonds were payable constituted liens upon all of the property located within the City of Longview, including that located within all the various local improvement districts of said city.

22. That the said bonds, other than the bonds of Local Improvement District No. 12 hereinbefore described, purchased by the plaintiff from the defendant have been defaulted as to the payment of interest, the exact dates and amounts of said defaults being as follows:

District No.	Date of Default in Payment of Interest.	Amount of Interest in Default.	
1	Sept. 25, 1934	$ 870.00	
	Mar. 25, 1935	870.00	$1740.00
7	July 23, 1934	30.00	
	Jan. 23, 1935	30.00	60.00
11	Nov. 27, 1934	6090.00	6090.00
17	Jan. 31, 1934	90.00	
	July 31, 1934	150.00	
	Jan. 31, 1935	150.00	390.00
18	Apr. 1, 1934	150.00	
	Oct. 1, 1934	150.00	
	Apr. 1, 1935	150.00	450.00
19	July 5, 1934	1410.00	
	Jan. 5, 1935	1410.00	2820.00
20	Mar. 30, 1934	30.00	
	Nov. 30, 1934	30.00	60.00

and that by reason of the foregoing, the said bonds purchased by the plaintiff from the defendant are not collectible from any of the sources upon which plaintiff relied at the time of the purchase of said bonds, and that said bonds were worth not to exceed the sum of Sixty Thousand Dollars ($60,000.00).

23. That by reason of the false, fraudulent and malicious representations and concealment as aforesaid by defendant, plaintiff has been damaged in the sum of Two Hundred Seventy-six Thousand One Hundred Fifty-seven Dollars Fifty Cents ($276,157.50), and that although plaintiff has demanded of defendant payment thereof, defendant has refused, and still refuses, to pay the same; to the damage of plaintiff in the sum of Two Hundred Seventy-six Thousand One Hundred Fifty-seven Dollars Fifty Cents ($276,157.50), with interest thereon at the rate of 6% per annum from August 4, 1934, the date of plaintiff's demand therefor.

21 Wherefore, plaintiff Prays that it have judgment against the defendant in the sum of Two Hundred Seventy-six Thousand One Hundred Fifty-seven Dollars Fifty Cents ($276,157.50), with interest thereon at the

rate of 6% per annum from August 4, 1934, the date of plaintiff's demand therefor.

Equitable Life Insurance Company
of Iowa,
By (Signed) F. W. Hubbell,
Vice-President and Treasurer.

Gamble, Read & Howland,
500 Bankers Trust Building,
Des Moines, Iowa,
and
Montgomery, Hart, Pritchard & Herriott,
120 South LaSalle Street,
Chicago, Illinois,
Attorneys for Equitable Life Insurance Company of Iowa, Plaintiff.

State of Iowa }
County of Polk } ss.

F. W. Hubbell, being first duly sworn, deposes and says that he is the Vice-President and Treasurer of Equitable Life Insurance Company of Iowa, plaintiff in the above and foregoing complaint subscribed by him; that he knows the contents thereof, and that the same is true.

(Signed) F. W. Hubbell.

Subscribed and sworn to before me this 9 day of April, 1935.

R. E. King,
Notary Public.

(Seal)

Filed Oct. 28, 1936.

22 And on, to wit, the 28th day of October, A. D. 1936, came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Amended and Supplemental Complaint in words and figures following, to wit:

23 In the District Court of the United States.

(Caption—44353)

AMENDED AND SUPPLEMENTAL COMPLAINT.

To the Judges of the District Court of the United States, For the Northern District of Illinois, Eastern Division:

Leave of court being first had and obtained, plaintiff, by Gamble, Read & Howland, and Montgomery, Hart,

Pritchard & Herriott, its attorneys, for the purpose of bringing before the court certain facts which have transpired since the filing of its original Complaint in this action, and for the purpose of amending and making more specific and certain the allegations of said original Complaint, now files this, its Amended and Supplemental Complaint, and complaining of Halsey, Stuart & Co., a corporation, defendant, states and alleges:

1. That plaintiff is a corporation organized and existing under the laws of the State of Iowa, with its home office and principal place of business in the City of Des Moines, County of Polk, and State of Iowa, and that it is engaged in the business of insuring lives, in the issuance of annuity contracts, and in other phases of the life insurance business.

2. That defendant is a corporation duly organized
24 and existing under the laws of the State of Illinois, with its principal place of business located in the City of Chicago, County of Cook and State of Illinois, in the district aforesaid, and that said defendant is now, and at all times hereinafter referred to has been engaged in the business of buying, selling and dealing in stocks, bonds and other securities issued by private corporations and by states and subdivisions thereof, including municipalities.

3. That plaintiff is a non-resident of the State of Illinois, and that defendant is a resident of the State of Illinois. That this is a suit of a civil nature, and that there is involved herein a sum in excess of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs, and that, therefore, this court has jurisdiction of the parties and the subject-matter hereof.

4. That plaintiff for more than ten (10) years last past customarily invested a portion of its policy reserves and other funds in state, county and municipal bonds and other securities made eligible for the investment of life insurance company funds by the laws of the State of Iowa. That prior to the purchase of the bonds hereinafter mentioned, plaintiff had purchased from defendant large amounts of municipal, state, county and school district bonds and securities. That all of said purchases of securities, including the purchase of certain bonds known as "Longview Local Improvement District Bonds," hereinafter more particularly described, were made by plaintiff purely for investment and for the purpose of
25 earning interest upon the policy reserves of plaintiff, and not for speculation or resale, and that all of said

purchases were made with the expectation that the securities purchased would be held by plaintiff until the maturity thereof. And plaintiff alleges that defendant and its officers, agents and representatives were at all times well aware that the securities purchased from time to time by plaintiff from defendant were purchased for investment purposes, as above set forth, and that at the time of the purchase by plaintiff from defendant of the certain aforesaid Longview Local Improvement District Bonds hereinafter described, defendant well knew that such purchases were made solely for said purpose.

That defendant and its officers, agents and representatives were at all times hereinafter mentioned well aware that under the laws of the State of Iowa the unsecured obligations of a private corporation were not eligible for investment of life insurance company funds, and with such knowledge said defendant solicited the purchase of said certain bonds known as "Longview Local Improvement District Bonds" by the plaintiff at the times hereinafter set forth, and represented said bonds to be municipal bonds of the type made eligible for investment of life insurance company funds by the laws of Iowa.

5. That The Long-Bell Lumber Company was at the times hereinafter referred to, a corporation organized under the laws of the State of Missouri, with its principal place of business at Kansas City, Missouri. That said Long-Bell Lumber Company was at all times herein referred to a large and extensive producer of lumber and forest products. That it owned extensive tracts of
26 standing timber in the states of Washington, Oregon and elsewhere in the United States, and in addition thereto, prior to November, 1930, it owned an extensive system of retail lumber yards for the sale at retail of the lumber and forest products produced by it. That in connection with the development of its lumbering operations in the State of Washington, said Long-Bell Lumber Company about the year 1924 constructed large and extensive mills for the purpose of producing commercial lumber, which mills were located at the junction of the Columbia and Cowlitz Rivers in the State of Washington. That in connection with the development of its said lumbering operations in the State of Washington, the said Long-Bell Lumber Company about the year 1924, caused a city to be organized and incorporated under the laws of the State of Washington, which was designated as the "City of Longview." That in addition to its lumbering opera-

tions, The Long-Bell Lumber Company at the times hereinafter referred to, was engaged in the promotion and sale of real estate located both within and without the said City of Longview, Washington, by means of certain wholly controlled subsidiary corporations known as "The Longview Company" and "The Longview Suburban Company." That said corporations were organized for the purpose of subdividing and reselling extensive tracts and parcels of real estate located in said City of Longview, or in close proximity thereto. That the extent of the operations in the subdividing, development and sale of real estate was not known to the plaintiff at the times it purchased the securities hereinafter described, but said activities were well known to defendant herein.

27 6. That the City of Longview was laid out on lowlands adjacent to and near the junction of the Cowlitz and Columbia Rivers. That in times of severe flood, the site of said city was subject to overflow, and that for the purpose of protecting the site from the flood waters of the Cowlitz and Columbia Rivers, The Long-Bell Lumber Company with its own funds, caused to be constructed an extensive series of dikes and drainage ditches. That for the purpose of reimbursing its treasury for said expenditures, The Long-Bell Lumber Company caused to be organized under the laws of the State of Washington, a so-called consolidated diking district, which was designated as Consolidated Diking District No. 1 of Cowlitz County. That The Long-Bell Lumber Company caused assessments payable in 16 instalments to be levied upon all the property embraced within said Consolidated Diking District No. 1, and caused the diking district to issue approximately $4,000,000 of bonds, which were made payable out of the proceeds of said assessments. That substantially all of the real estate located within the City of Longview was included within and subject to assessment within said Consolidated Diking District No. 1 of Cowlitz County. That the bonds issued by said diking district were delivered to The Long-Bell Lumber Company, and that said bonds were marketed and sold by the defendant herein to investors throughout the United States, with a guaranty of principal and interest thereof indorsed thereon, duly executed by The Long-Bell Lumber Company. That large and burdensome assessments were levied upon substantially all the real estate embraced within the limits of the City of Longview for the construc-

tion of the diking and drainage improvements con-
28 structed in said consolidated diking district. That defendant at all times herein referred to, well knew of the existence of the consolidated diking district, and the fact that the diking district embraced substantially all the real estate within the City of Longview. That defendant also well knew the extent of the assessments levied in said consolidated diking district, and that the same constituted liens upon the real estate against which the assessments were levied.

The City of Longview was laid out by The Long-Bell Lumber Company upon lands wholly owned by it. In the early history of said city, its affairs were wholly dominated and controlled by The Long-Bell Lumber Company. That for some years after the incorporation of the City of Longview as a city under the laws of Washington, substantially all members of the city council, and other officers of said city, were employes of The Long-Bell Lumber Company. That when the City of Longview was laid out and established, the plans therefor adopted by the officers of The Long-Bell Lumber Company contemplated that the city would within a very short time have a population of from forty to fifty thousand persons. In the expectation of the immediate development of said city, The Long-Bell Lumber Company by provisions embodied in the plats of said city, regulated and restricted the uses to which real estate within said city might be put. That by said restrictions and regulations, certain areas were to be used for the construction of residences costing not less than prescribed sums; that other areas were restricted to industrial or commercial uses. That in expectation of the immediate development of the city, vast areas of vacant and wholly unimproved land were left between the industrial and commercial sections of the city, and between the various classes of residential
29 districts of said city. For the purpose of improving its own real estate holdings, and to attract persons to Longview, and to promote the sale of the real estate held by it and by its subsidiaries, The Long-Bell Lumber Company constructed with its own funds, many miles of concrete pavements, sidewalks, storm and sanitary sewers, and caused the streets of the city to be improved by paving in some instances, and in other instances by curbing, grading, graveling and by the construction of sidewalks. That such street improvements were constructed by The Long-Bell Lumber Company adjacent to much of the vacant and wholly unimproved property owned by said

Long-Bell Lumber Company or its subsidiaries within the said City of Longview, and that the improvements so constructed were adequate for and designed to accommodate the needs of a city having a population of from forty to fifty thousand persons.

7. That under the laws of the State of Washington, cities are authorized and empowered to establish within their limits, so-called "local improvement districts," and to construct in such districts, local public improvements, such as pavements, sewers, curbs and sidewalks. Cities are authorized to levy assessments payable in instalments against the real estate benefited by the construction of such local improvements, and included within the boundaries of the local improvement districts. That cities are further empowered to issue bonds payable out of the proceeds of said special assessments, and that bonds so issued are designated as "Local Improvement District Bonds." In the years 1926 and 1927 The Long-Bell Lumber Company, which then dominated and controlled the City of Longview, and its city council, for the purpose of reimbursing its treasury for expenditures made by it in connection with the construction of local improvements in Longview, caused and procured the city council of Longview to create certain local improvement districts within the city, and to purchase by condemnation and otherwise, the improvements previously constructed in the streets of said city by The Long-Bell Lumber Company. That accordingly, the city council of the City of Longview took the necessary legal steps and created within the City of Longview, a series of so-called local improvement districts, which districts were designated and described as Longview Local Improvement Districts, Nos. 1 to 22, inc. That the City council levied assessments upon all the real estate and parcels of land embraced within the various local improvement districts, which assessments were made payable in instalments, and in anticipation of the collection and payment of such instalments, the City of Longview issued in each of said districts, Local Improvement District Bonds. That when said bonds were issued, they were in some instances delivered direct to The Long-Bell Lumber Company in payment for improvements previously made by The Long-Bell Lumber Company, or were purchased by The Long-Bell Lumber Company, which advanced to the contractors constructing the various local improvements, the funds necessary to pay therefor. That among the local improvement districts so created by action of the city council of the City of Longview, were the following:

Longview Local Improvement District No. 1—This district was created for the purpose of defraying the cost of paving Kessler Blvd. and certain other streets in the City of Longview, and of curb and sidewalk improvements upon said streets. It included within its limits the better residential portion of the City of Longview, and a parkway and artificial lake which was owned by The Long-Bell Lumber Company, or its subsidiaries.

31 Longview Local Improvement District No. 7—A district created to defray the cost of graveling, grading and otherwise improving Douglas Street, and certain other streets in the City of Longview. Said district includes one of the cheaper residential districts of the city, and the majority of the lands embraced therein were and are wholly unimproved.

Longview Local Improvement District No. 11—This district was organized as a sewer improvement district. The Long-Bell Lumber Company caused the City of Longview to condemn a system of sanitary and storm sewers previously constructed by the lumber company with its own funds, and bonds were issued to The Long-Bell Lumber Company in the amount of the condemnation price. That said district includes substantially all the real estate embraced within the limits of the City of Longview.

Longview Local Improvement District No. 12—A district created for the purpose of defraying the cost of construction of certain sewers located in Alabama Street and other streets in the City of Longview.

Longview Local Improvement District No. 18—A district created to defray the cost of paving Fifteenth Avenue and other streets in the City of Longview.

Longview Local Improvement District No. 19—A district created to defray the cost of constructing a bridge across Cowlitz River, the paving of California Way, and embracing substantially all real estate within the City of Longview.

That after receiving the bonds issued by the various local improvement districts, The Long-Bell Lumber Company being then desirous of disposing of said bonds, contracted with the defendant for the sale of said bonds to defendant. That by some contract or arrangement between the said Long-Bell Lumber Company and defendant, the exact nature of which is at this time unknown to plaintiff, The Long-Bell Lumber Company guaranteed the payment of the principal and interest of said Local Improvement District Bonds, and defendant undertook to, and did dis-

tribute and sell many of said bonds to its customers and investors throughout the United States.

8. That defendant for more than ten years last past, and at all times referred to in this complaint, was and
32 has been the fiscal agent and banker for The Long-Bell Lumber Company, and certain of its associated and subsidiary corporations. That at the times plaintiff purchased from defendant the Longview Local Improvement District Bonds herein referred to, plaintiff knew that defendant had been and was acting as the fiscal agent for the said Long-Bell Lumber Company, and knew that defendant was thoroughly familiar with the operations of The Long-Bell Lumber Company, both at Longview, Washington, and elsewhere. That defendant and its officers at all times hereinafter referred to knew the financial condition of said Long-Bell Lumber Company, including the amounts of its outstanding indebtedness, the incumbrances upon its property and the property of its subsidiaries, the amount and value of its unincumbered assets, as well as the amount of the various assessments and bond issues, the payment of which constituted a charge and lien upon the real estate embraced within the said City of Longview. That defendant well knew that consolidated diking district bonds aggregating approximately $4,000,000 par value had been issued by Consolidated Diking District No. 1 of Cowlitz County, Washington, and were then outstanding, and that the assessments levied in said consolidated diking district constituted liens upon substantially all of the real estate located within the City of Longview equal to or superior to the liens of the assessments levied in the various local improvement districts in said city. That defendant was likewise well aware that the City of Longview had been laid out in the expectation that it would shortly have a population of not less than forty thousand persons. That,
many of the public improvements constructed in said
33 city had been built adjacent to vacant and unimproved lands, and defendant was well aware in 1930 that the City of Longview had not developed in accordance with the expectations of its founders, and that it had a population of only approximately ten thousand persons, whereas the improvements constructed therein contemplated, and were sufficient to accommodate the needs of a population of approximately forty thousand persons. That in the year 1930, at the times of the purchase of the Longview Local Improvement District Bonds by the plaintiff, more than 70% in value of all real estate within the various

Local Improvement Districts of said City of Longview, was owned by The Long-Bell Lumber Company or its subsidiary corporations, of which fact defendant was fully advised.

9. That defendant was at all times herein referred to one of the largest investment banking houses doing business in the United States, with numerous branch offices. That defendant was well and favorably known to plaintiff as an investment house, offering to individual and corporate investors throughout the United States, high-class investment securities which defendant had investigated, and which it recommended to its customers as sound, conservative investments; that defendant extensively advertised itself as a reputable investment house, and that its principal advertising slogan was "Bonds to fit the Investor." All negotiations in connection with the purchase of said Longview Local Improvement District Bonds were conducted by plaintiff from its home office in Des Moines, Iowa. That the City of Longview, Washington, is located approxi-
34 mately 2,000 miles distant from the City of Des Moines, and defendant well knew at the times it sold the Longview Local Improvement District Bonds to plaintiff, that plaintiff relied upon the statements so made by defendant as to the character of and the security behind the bonds so offered. That plaintiff did in fact rely upon the representations and statements made by defendant and its agents, hereinafter more specifically described, in the purchase of the City of Longview Local Improvement District Bonds.

10. That defendant, at divers times, as hereinafter more particularly set forth, bargained with plaintiff, at defendant's request, to sell, and did sell to plaintiff, certain of said Longview Local Improvement District Bonds at the dates, and in the amounts, and for the purchase prices hereinafter set forth, to-wit:

On the 21st day of May, 1930, defendant sold to plaintiff Eighty-five Thousand ($85,000.00) Dollars par value of said Longview Local Improvement District Bonds, as follows:

District No.	Serial Nos.	Par Value
1	207 to 216, inc.—308	$11,000
7	49 to 53, inc.	5,000
12	94 to 96, inc.	
	114 to 118, inc.	
	140 to 144, inc.	13,000
17	14 to 18, inc.	
	20 to 22, inc.	8,000
18	32 and 35	2,000
19	260, 262, 264 and 320	4,000
	326 to 336, inc.	11,000
	344 to 347, inc.	4,000
	419 to 442, inc.	24,000
	444 to 446, inc.	3,000
		$85,000

for the price of Eighty-four Thousand Seven Hundred Eighty-seven Dollars Fifty Cents ($84,787.50), which amount plaintiff then and there paid to defendant.

35 That on the 12th day of June, 1930, defendant sold to plaintiff Fifteen Thousand ($15,000.00) Dollars par value of said Longview Local Improvement District Bonds, as follows:

District No.	Serial Nos.	Par Value
1	314-343 to 346, inc.	$ 5,000
	355 to 357, inc.	3,000
	376 and 377	2,000
	395 to 397, inc.	3,000
19	313	1,000
20	10	1,000
		$15,000

for the price of Fourteen Thousand Nine Hundred Sixty-two Dollars Fifty Cents ($14,962.50), which amount plaintiff then and there paid to defendant.

That on the 29th day of September, 1930, defendant sold to plaintiff Twenty-six Thousand ($26,000.00) Dollars par value of said Longview Local Improvement District Bonds, as follows:

District No.	Serial Nos.	Par Value
1	272-273	$ 2,000
7	102	1,000
11	839-840	2,000
	902 to 904, inc.	3,000
	820	1,000
	841 to 843, inc.	3,000
	905 and 906	2,000
12	107 to 109, inc.	3,000
	294 to 297, inc.	4,000
	414 to 418, inc.	5,000
		$26,000

for the price of Twenty-five Thousand Nine Hundred Thirty-five ($25,935.00) Dollars, which amount plaintiff then and there paid to defendant.

That on the 10th day of October, 1930, defendant sold to plaintiff Nine Thousand ($9,000.00) Dollars par value of said Longview Local Improvement District Bonds, as follows:

District No.	Serial Nos.	Par Value
1	337 to 340, inc. and 390	$ 5,000
18	26-33-34	3,000
20	5	1,000
		$ 9,000

for the price of Eight Thousand Nine Hundred Seventy-seven Dollars Fifty Cents ($8,977.50), which amount plaintiff then and there paid to defendant.

That on the 29th day of October, 1930, defendant sold to plaintiff Two Hundred Thousand ($200,000.00) Dollars par value of said Longview Local Improvement District Bonds, as follows:

District No.	Serial Nos.	Par Value
11	367 to 408, inc.	$42,000
	455 to 504, inc.	50,000
	546 to 595, inc.	50,000
	637 to 661, inc.	25,000
	664 to 686, inc.	23,000
	688 to 693, inc.	6,000
	697 to 700, inc.	4,000
		$200,000

for the price of One Hundred Ninety-nine Thousand Five Hundred ($199,500.00) Dollars, which amount plaintiff then and there paid to defendant.

That on the 30th day of October, 1930, defendant sold to plaintiff Two Thousand ($2,000.00) Dollars par value of said Longview Local Improvement District Bonds as follows:

District No.	Serial Nos.	Par Value
11	662 and 663	$2,000

for the price of One Thousand Nine Hundred Ninety-five ($1,995.00) Dollars, which amount plaintiff then and there paid to defendant.

37 11. That plaintiff subsequently, at the request of defendant, exchanged with defendant certain of said Longview Local Improvement District Bonds previously purchased by plaintiff from defendant for other similar bonds, to-wit:

On the 13th day of February, 1931, plaintiff so exchanged with defendant Thirteen Thousand ($13,000.00) Dollars par value of said bonds, being District No. 19 Bonds, Nos. 419 to 431, inclusive, for District No. 1 Bond No. 391, District No. 6 Bond No. 60, District No. 11 Bonds Nos. 745 to 748, inclusive, and Bonds 751 and 752, District No. 12 Bond No. 196, and District No. 19 Bonds Nos. 257, 406, 407 and 408; and likewise, on the 11th day of March, 1931, plaintiff so exchanged with defendant Three Thousand ($3,000.00) Dollars par value of said bonds, being District No. 17 Bonds Nos. 20, 21 and 22 for District No. 1 Bonds Nos. 392, 393 and 394.

12. That since the purchase of the City of Longview Local Improvement District Bonds by plaintiff from defendant, and prior to the commencement of this action, the following numbered bonds in the districts specified were paid and retired from the proceeds of special assessments by the City Treasurer of said City of Longview, Washington:

District No. 1, Bonds 207 to 212, inclusive;
District No. 6, Bond No. 60;
District No. 7, Bonds 49 to 53, inclusive;
District No. 11, Bonds 367 to 383, inclusive, and
District No. 20, Bond No. 5.

That the balance of said Longview Local Improvement District Bonds purchased by the plaintiff from defendant, amounting to Three Hundred Eight Thousand Dollars ($308,000.00) par value, were owned and held by plaintiff at the commencement of this action.

38 13. That defendant for the purpose of inducing plaintiff to purchase the bonds of the City of Longview Local Improvement Districts hereinbefore described,

and prior to the purchases thereof by plaintiff, wilfully, maliciously, fraudulently and falsely wrote to plaintiff a letter describing said bonds, in which among other things, defendant stated:

"You observe, of course, that this city has no funded debt other than these improvement bonds, and that the original debt has been materially reduced through retirement and maturity.

We believe that you have before you practically all the data covering this issue of bonds, but if you have any questions in mind, we shall be pleased indeed to have you call Mr. Kelley or this office for anything you may need." That by means of such representation, defendant led plaintiff to believe that the City of Longview Local Improvement District Bonds were the only outstanding bonds constituting a charge or lien upon the lands and property included within the various local improvement districts of said city, while in truth and in fact, as defendant well knew, substantially all property included within the City of Longview was subject to the lien of large and burdensome assessments levied in connection with Consolidated Diking District No. 1 of Cowlitz County, Washington, which assessments in most instances exceeded in amount the liens of the assessments levied in the local improvement districts, and which liens were equal to or superior to the liens of the assessments levied in said local improvement districts. That by reason of the statements and representations so made by defendant, defendant intended to and did in fact lead plaintiff to believe that there were no other facts or circumstances within the knowledge of defendant substantially affecting the value of said Local Improvement District Bonds, and
39 particularly that there were no other assessment bonds or assessment liens against the real estate upon which the local improvement assessments had been levied. Plaintiff avers that because of the partial disclosure of facts surrounding said issue of bonds made by defendant to plaintiff, defendant was under obligations to fully and completely disclose all facts having a bearing upon the value of said issue of Local Improvement District Bonds, and that the representations so falsely and fraudulently made by defendant deceived and misled plaintiff with respect to a material fact having a direct bearing upon the value of said securities. That having made representations with respect to the status of said bonds, it was the duty of defendant to make a full and complete disclosure of all the facts with respect to said

issue of bonds, and by concealing the existence of the lien of diking district assessments, and the existence of the outstanding diking district bonds, defendant falsely and fraudulently induced plaintiff to believe that said Local Improvement District Bonds constituted a first and prior lien upon the lands and property included within the various Local Improvement Districts of said city.

That defendant for the purpose of inducing plaintiff to purchase the Longview Local Improvement District Bonds, wilfully, maliciously, fraudulently and falsely represented to plaintiff as follows: That the City of Longview, Washington, because of its natural advantages and proximity to the timber stands of The Long-Bell Lumber Company and the Weyerhaeuser interests (referring thereby to the Weyerhaeuser Timber Company and its allied and subsidiary corporations, constituting the world's largest producer of lumber and forest products) had been selected as the site for the vast lumber manufacturing plants of both of said companies, and that the world's largest lumber mills were located at Longview. That in connection with the purchase of said bonds of Local Improvement Districts Nos. 11 and 19, defendant falsely, fraudulently and wilfully represented that said districts embraced within their limits, all property within the City of Longview, and by means of said representations and statements, defendant led plaintiff to believe that the vast lumber mills of said Long-Bell Lumber Company and of the Weyerhaeuser interests were located within the said local improvement districts, and were subject to the payment of assessments out of which the Local Improvement District Bonds would be paid. That in truth and in fact, the vast lumber mills of The Long-Bell Lumber Company and the Weyerhaeuser interests were and are located outside the limits of the City of Longview, and that none of said properties were or are subject to the payment of assessments in Local Improvement Districts Nos. 11 and 19.

That defendant wilfully, fraudulently and falsely represented to plaintiff that manufacturing and industrial plants had been erected at Longview by the Longview Concrete Pipe Company, Pacific Straw Board & Paper Company, the Magor Car Corporation, The Standard Oil Company, the Central Mill Works and The Longview Fibre Company, and that the industrial plants of the companies named, were included within the limits of the City of Longview, and were subject to assessment in Districts

Nos. 11 and 19. That in truth and in fact, as was well known to defendant, none of said industries were located within the limits of the City of Longview, and none of the property held by said industrial plants was subject to assessments in any of said local improvement districts.

41 That defendant wilfully, fraudulently and falsely represented to plaintiff that the City of Longview had a frontage of seven and one-quarter miles upon the Columbia River, and that said city was a port of call for ocean-going vessels midway between Portland and the Pacific Ocean. That in truth and in fact, said City of Longview had no frontage upon the Columbia River, except for a distance of two hundred yards immediately adjacent to the so-called "Port of Longview" Docks. That the Port of Longview Docks were not within the limits of Local Improvement Districts Nos. 11 and 19, although defendant falsely and fraudulently represented to plaintiff that said districts embraced all of the lands lying within the limits of the City of Longview.

14. That for the purpose of inducing plaintiff to purchase the bonds of the various local improvement districts hereinbefore described, defendant stated and represented to plaintiff that it had furnished to plaintiff all information concerning the local improvement districts of said city then in its possession, and led plaintiff to believe that it had furnished full, complete and accurate information as to the said City of Longview, Washington. That having made some representations, it was the duty of defendant to truly, fairly and accurately state the facts, and all the facts surrounding said City of Longview, and not to withhold any material information concerning said city, or the various issues of bonds. That having given to plaintiff herein information indicating that the Longview Local Improvement District Bonds constituted desirable investments, it was the duty of said defendant to accurately state the true facts as to said bonds, and the security behind them. That in such connection, defendant by the representations made, and by wilfully, falsely and fraudulently concealing from

42 plaintiff the following material facts with respect to the City of Longview, and the Local Improvement District Bonds, deceived and misled the plaintiff with respect thereto, as follows, to-wit:

(1) That the founders of the City of Longview had laid out the city to accommodate a population of at least forty thousand persons, and had constructed local public

improvements in said city to provide for the needs of approximately forty thousand persons (for the payment of which the Local Improvement District Bonds had been issued) whereas, in truth and in fact, the City of Longview in the year 1930 had a population only slightly in excess of ten thousand persons, and there was then no reasonable expectation that said city would ever expand so as to justify the improvements actually constructed.

(2) That the City of Longview had been laid out in zones or districts with vast unimproved and wholly vacant areas of land lying between the various districts or zones of said city, and that local public improvements had been constructed and assessments therefor had been very largely levied against the vacant and unimproved lands lying between the various improved portions of said city.

(3) That the value of the vacant and unimproved lands subject to assessment within said local improvement districts was much less than the amounts of the combined local improvement and consolidated dike assessments levied against such lands.

(4) That a very large portion of all the real estate located within the City of Longview, Washington, was owned by The Long-Bell Lumber Company or its subsidiaries, and that substantially all of the vacant and unimproved property subject to assessment within the
43 boundaries of the local improvement districts was owned by The Long-Bell Lumber Company or its subsidiaries, and that because of the existence of large and burdensome assessments levied in connection with Consolidated Diking District No. 1 of Cowlitz County, the combined assessments against said real estate largely exceeded the actual value thereof, so that the only security for the payment of said bonds was in fact the security furnished by the guaranty of The Long-Bell Lumber Company indorsed thereon.

15. That defendant, for the purpose of inducing plaintiff to purchase the Local Improvement District Bonds of the City of Longview, represented to plaintiff that said bonds were unconditionally guaranteed as to payment of principal and interest by The Long-Bell Lumber Company; that The Long-Bell Lumber Company was a large and successful producer of lumber and forest products, owning the world's largest mills, located at Longview, Washington. In connection with negotiations for the purchase of said Local Improvement District Bonds by plaintiff, defendant furnished to plaintiff a financial state-

ment of The Long-Bell Lumber Company and Long-Bell Lumber Corporation, an affiliated corporation which owned more than 99% of the common stock of The Long-Bell Lumber Company, which statement purported to show the financial condition of the lumber company and lumber corporation as of January 1, 1930. That the statements so exhibited to plaintiff disclosed that The Long-Bell Lumber Company had liquid current assets in an amount substantially twice its current liabilities. That defendant stated and represented to plaintiff that it had furnished to plaintiff "all the data covering this issue of bonds," (referring thereby to bonds of the various local improvement districts of the City of Longview).

44 That by means of such representations, defendant led plaintiff to believe that defendant had disclosed to plaintiff all of the facts then known to it concerning The Long-Bell Lumber Company, and falsely and fraudulently led plaintiff to believe that the financial condition of said Long-Bell Lumber Company and Long-Bell Lumber Corporation was not substantially different at the time the financial statement of January 1, 1930 was exhibited to plaintiff, from the financial condition of said corporations as of the date of said statement. That defendant wilfully, fraudulently and falsely concealed from plaintiff the fact that The Long-Bell Lumber Company was at the times of the purchase of the Local Improvement District Bonds by plaintiff, in financial difficulties; that loans due by said Long-Bell Lumber Company to commercial banks in excess of $3,000,000 had been called for payment, and that as a condition to future credit, said banks from which The Long-Bell Lumber Company had received a line of credit for years, had required the said Long-Bell Lumber Company to transfer all of its free, liquid and unincumbered assets, including cash, accounts receivable, inventories and other readily salable property to a certain corporation to be organized, the capital stock of which was to be owned by The Long-Bell Lumber Company. That defendant well knew that if the transfer of the liquid and unincumbered assets of The Long-Bell Lumber Company to a new corporation were carried out as demanded by certain commercial banks, and as then contemplated

45 by The Long-Bell Lumber Company, The Long-Bell Lumber Company would be stripped of its working capital and left without sufficient liquid assets to meet the guaranty of principal and interest upon the Longview Local Improvement District Bonds. That defendant was

advised of all of said facts, but falsely and fraudulently concealed the same from plaintiff.

That while negotiations between plaintiff and defendant for the purchase by plaintiff of the Local Improvement District Bonds were pending, The Long-Bell Lumber Company was then arranging to form a corporation known as the Long-Bell Lumber Sales Corporation; that such plan was well known to defendant and its officers, and pursuant to such plan, The Long-Bell Lumber Company did cause such new corporation to be organized, and did transfer to the new corporation substantially all its cash, its inventories of finished lumber and materials, all its retail lumber yards, and substantially all its unincumbered property. That the transfer was actually effected prior to the purchase of $200,000 of said Longview Local Improvement District Bonds by plaintiff, but such fact was unknown to plaintiff, and defendant falsely and fraudulently concealed the facts with respect thereto. That by reason of the transfer of the liquid assets and unincumbered property of The Long-Bell Lumber Company to the new corporation, The Long-Bell Lumber Company was stripped of all its working capital, and all its liquid assets, and The Long-Bell Lumber Company then had no means with which to meet the instalments of assessments upon the real estate owned by it at Longview, out of which the Local Improvement District Bonds were payable, so that very shortly after the transfer of assets to the Long-Bell Lumber Sales Corporation had been effected, The Long-Bell Lumber Company became and was wholly unable to pay the instalments of assessments
46 levied upon its real estate at Longview, and thereby a default in the payment of the principal and interest of said Longview Local Improvement District Bonds was brought about.

16. In June, 1934, The Long-Bell Lumber Company voluntarily went into bankruptcy by filing in the office of the clerk of the United States District Court for the Western District of Missouri at Kansas City, Missouri, a petition under the provisions of Section 77-B of the Federal Bankruptcy Act, in which it asked the court to readjust its capital structure. That the petition of The Long-Bell Lumber Company was approved by the United States District Court for the Western District of Missouri. That in March, 1935, the said Long-Bell Lumber Company filed a plan of recrganization in said court, which plan provided among other things, that The Long-Bell Lumber

Company be relieved of the guaranty of principal and interest upon Longview Local Improvement District Bonds, and that the holders of said bonds may be required to accept in lieu of such guaranty, eight shares of common stock in the reorganized Long-Bell Lumber Company for each $1,000 of Local Improvement District Bonds. That in said proposed plan of reorganization, the creditors of the so-called Long-Bell Lumber Sales Corporation were preferred and paid in full. That plaintiff did not acquiesce in said plan of reorganization so proposed by The Long-Bell Lumber Company, but on the contrary, objected to and protested against said plan. That the objections and protest of plaintiff were by the court overruled, and the plan of reorganization for The Long-Bell Lumber Company was ratisfied, confirmed and approved by the United States District Court for the Western District of Missouri, and by the order and decree of said court, the plan of reorganization became effective. That by the terms of said reorganization plan, plaintiff became entitled to certain shares of new common stock of the reorganized
47 Long-Bell Lumber Company at the rate of eight shares for each $1,000 bond held. That under the terms of the order and decree of the court, the stock allocated to the Longview Local Improvement District bondholders is held in trust by a trust company in Kansas City, Missouri. That the number of shares of common stock which plaintiff will ultimately receive cannot now be definitely stated. That the actual value of said stock is speculative and problematical, but that plaintiff is willing to credit upon its claim against the defendant herein, the actual value of said stock, but states and alleges upon information and belief, that the actual value thereof does not exceed $10,000.00.

17. That after the approval of the plan of reorganization of The Long-Bell Lumber Company by the United States District Court for the Western District of Missouri, at Kansas City, the Long-Bell Lumber Company determined to pay up in full the remaining local improvement district assessments upon its improved properties at Longview, and that pursuant to such plan, the reorganized Long-Bell Lumber Company paid off the assessments upon most of its improved property located within the City of Longview. That the payments so made by The Long-Bell Lumber Company and its subsidiaries were sufficient to pay up certain interest then in default, and to retire a

few of the outstanding bonds. That the bonds so paid included the following:

District No.	Bond Nos.	Amount
1	213	$ 1,000.00
11	383 to 406, inc.	24,000.00
12	94, 95, 96, 107, 108, 109	6,000.00
17	14 to 18, inc.	5,000.00
20	10	1,000.00

48 That in addition to the payments of assessments upon improved properties owned by The Long-Bell Lumber Company, certain other individuals owning real estate at Longview have made additional payments of assessments, so that the following additional bonds have been paid:

District No.	Bonds Nos.	Amount
1	214 and 215	$2,000.00
11	407 and 408	2,000.00
12	114	1,000.00

and that plaintiff still holds two hundred sixty-six of said Longview Local Improvement District Bonds. That the interest on bonds in Districts Nos. 7, 12, 18 and 19 is now in default, and that upon the next coupon paying date, default in the payment of interest is almost certain to occur in Districts Nos. 1 and 11. By reason of the facts as hereinbefore set forth, the bonds purchased by plaintiff from the defendant are not now collectible from any of the sources upon which plaintiff relied at the time of the purchase of said bonds, and plaintiff alleges that said bonds at the time of the purchase thereof by plaintiff, were worth not to exceed $86,000.00.

18. That plaintiff relied solely upon the representations of defendant with respect to said Longview Local Improvement District Bonds, and without independent investigation on its own part, purchased from defendant at the times hereinabove set forth, the Longview Local Improvement District Bonds of the par value of Three Hundred Thirty-seven Thousand Dollars ($337,000.00), and paid therefor to defendant at Des Moines, Iowa, the sum of Three Hundred Thirty-six Thousand, One Hundred Fifty-seven and 50/100 Dollars ($336,157.50).

49 19. That by reason of the false, fraudulent and malicious representations made by defendant as hereinbefore set forth, plaintiff has been damaged in the sum of Two Hundred Fifty Thousand, One Hundred Fifty-seven and 50/100 Dollars ($250,157.50); that although plaintiff demanded of defendant payment thereof on August 4,

1934, defendant refused, and still refuses to pay the same, all to the damage of the plaintiff in the sum of Two Hundred Fifty Thousand, One Hundred Fifty-seven and 50/100 Dollars ($250,157.50).

Wherefore, plaintiff prays that it have judgment against the defendant in the sum of Two Hundred Fifty Thousand, One Hundred Fifty-seven and 50/100 Dollars ($250,157.50) with interest thereon at six per cent per annum from August 4, 1934, the date of plaintiff's demand therefor, and for its costs and disbursements in this cause as taxed by the clerk.

Equitable Life Insurance Company
of Iowa,
By F. W. Hubbell,
Vice President & Treasurer.

Gamble, Read & Howland,
500 Bankers Trust Bldg.
Des Moines, Iowa.
Montgomery, Hart, Pritchard & Herriott,
120 So. LaSalle Street,
Chicago, Ill.
Attorneys for Plaintiff.

State of Iowa, }
County of Polk. } ss.

F. W. Hubbell, being first duly sworn on oath deposes and states that he is Vice President and Treasurer of Equitable Life Insurance Company of Iowa, plaintiff in the above and foregoing complaint that he has read the same, and knows the contents thereof, and the same is true and correct as he verily believes.

F. W. Hubbell.

Subscribed and sworn to before me this 19th day of October, 1936.

J. H. Martin,
(Seal) *Notary Public in and for the County and State aforesaid.*

50 And on, to wit, the 2nd day of December, 1936, came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Motion in the nature of a Demurrer in words and figures following, to wit:

51 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Dec. 2, 1936.

* * (Caption—44353) * *

MOTION IN THE NATURE OF A DEMURRER TO STRIKE CERTAIN PORTIONS OF PLAINTIFF'S COMPLAINT AND TO STRIKE A PORTION OF PLAINTIFF'S PRAYER FOR RELIEF.

Now comes Halsey, Stuart & Company, Incorporated, a corporation, by its counsel, Messrs. Poppenhusen, Johnston, Thompson & Raymond, and by way of its motion in the nature of a demurrer moves as follows:

I.

Defendant moves to strike that portion of the prayer for relief contained in plaintiff's complaint for interest at six per cent (6%). By way of specification defendant further points out:

The instant proceeding is one at law seeking damages for an alleged fraudulent sale of certain municipal securities by defendant to plaintiff. The amount of the damages is unliquidated and uncertain. Plaintiff alleges that it demanded defendant pay the sum for which suit is
52 brought, and that defendant failed and refused to pay. Interest at six per cent (6%) from date of demand is asked. Defendant alleges that such claim of interest has no foundation in law since interest is not allowable on claims for damages; and further, that even if allowable, the interest would in any event be at the legal rate of five per cent (5%) per annum, and not six per cent (6%) as demanded.

II.

Defendant moves to strike those portions of plaintiff's complaint wherein it is asserted that defendant was under a duty to disclose certain alleged additional facts to plaintiff. By way of specification defendant points out:

The complaint sets forth that defendant sold plaintiff certain Local Improvement Bonds of the City of Longview, State of Washington; that plaintiff's Home Office is in Des Moines, Iowa and defendant's in Chicago, Illinois; that all negotiations took place in Des Moines, Iowa. It is further alleged that the parties had done business together for a number of years; that defendant represented

the Local Improvement District Bonds to be the only funded debt of City of Longview; that certain Diking District Bonds were outstanding which under Washington Law constitute liens upon same property as Local Improvement District Bonds; that the lien of the Diking District Bonds were on a parity with or superior to the lien of the Local Improvement District Bonds; that
53 plaintiff believed Local Improvement Bonds were the only liens, or at least were superior liens; that defendant did not disclose existence of Diking District Bonds or their nature; and that defendant was under a duty to disclose such facts. The complaint alleges knowledge on the part of defendant of other facts affecting the value of the securities which defendant did not disclose.

The complaint sets forth a letter from defendant to plaintiff stating:

"We believe that you have before you practically all the data covering this issue of bonds, but if you have any questions in mind, we shall be pleased, indeed, to have you call our Mr. Kelly of this office for anything you may need."

The complaint does not allege that a fiduciary relation existed between the parties, nor does it allege that any request for information was made by plaintiff.

Defendant therefore asserts:

Plaintiff fails to allege facts raising a duty on the part of defendant voluntarily to disclose information which it is alleged to have had.

Plaintiff fails to allege facts raising a fiduciary relation between plaintiff and defendant so as to predicate thereon a duty to disclose information alleged to have
54 been in the knowledge of defendant.

Plaintiff fails to allege plaintiff requested information concerning the matters and things about which defendant now is alleged to have had knowledge, or that defendant refused to give any information requested, or that when requested to give information it represented facts falsely.

Plaintiff fails to allege that defendant in any way prevented plaintiff from investigating and discovering all the facts alleged, which facts were readily ascertainable.

Opinions as to matters of law cannot be the basis of fraudulent misrepresentations.

The many recitals that defendant wilfully, maliciously, fraudulently, and falsely concealed alleged facts in its knowledge are conclusions of law.

It appears from the face of the complaint that the facts

alleged to be in the knowledge of defendant were all matters of public record or readily ascertainable by an examination of standard financial services, and that such sources of information were as readily available to plaintiff as to defendant.

Halsey, Stuart & Co.,
Defendant,
By Poppenhusen, Johnston, Thompson & Raymond,
Its Attorneys.

55 Albert E. Jenner, Jr. hereby certifies that the foregoing Motion is not interposed for the purpose of delay, and that the same is in his opinion well founded in law.

Albert E. Jenner, Jr.

56 And afterwards, to wit, on the 11th day of March, A. D. 1937, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit: Entered Mar. 11, 1937.

57 In the District Court of the United States.
* * (Caption—44353) * *

Thursday, March 11, A. D. 1937.

Present: The Honorable James H. Wilkerson, District Judge.

It Is Ordered by the Court that the Defendant's motion in the nature of a Demurrer to strike certain portions of Plaintiff's Complaint and to strike a portion of plaintiff's prayer for relief be and the same is hereby overruled.

58 And on, to wit, the 29th day of April, 1937, came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Answer in words and figures following, to wit:

Filed Apr. 29, 1937. 59 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—44353) * *

ANSWER OF HALSEY, STUART & CO. INC., DEFENDANT, TO THE AMENDED AND SUPPLEMENTAL COMPLAINT OF EQUITABLE LIFE INSURANCE COMPANY OF IOWA, PLAINTIFF.

I.

Halsey, Stuart & Co. Inc., defendant, answering the amended and supplemental complaint of Equitable Life Insurance Company of Iowa, plaintiff, says:

1. Defendant admits the statements contained in the first paragraph of said amended and supplemental complaint.

2. Defendant admits the statements contained in the second paragraph in said amended and supplemental complaint, except that portion thereof which states that the defendant is engaged in the business of buying, selling and dealing in stocks, the business of said defendant being confined to the buying, selling and dealing in bonds and other funded obligations issued by private corporations and by states and subdivisions thereof.

60 3. Defendant admits the statements in the third paragraph of said amended and supplemental complaint.

4. As to the fourth paragraph of the amended and supplemental complaint, defendant has no knowledge sufficient to form a belief as to whether or not plaintiff for more than ten years last past (or any other period) customarily invested a portion of its policy reserves and other funds in state, county and municipal bonds and other securities made eligible for the investment of life insurance company funds by the laws of the State of Iowa.

Defendant admits that prior to the purchase of the bonds referred to in said amended and supplemental complaint plaintiff had purchased from defendant large amounts of municipal, state, county and school district bonds, and defendant further states that plaintiff had also purchased of defendant bonds of private corporations.

Defendant has no knowledge sufficient to form a belief as to whether or not all or any part of said purchases of securities, including the purchase of certain bonds known as "Longview Local Improvement Districts Bonds", were

made by plaintiff purely for investment and for the purpose of earning interest upon the policy reserves of plaintiff, and not for speculation or resale, or whether or not all of said purchases were made with the expectation that the securities purchased would be held by plaintiff
61 until the maturity thereof, except that defendant knows that said plaintiff did frequently resell and exchange, before the maturity thereof, securities which said plaintiff had purchased from the defendant and from others.

Defendant denies that the defendant and its officers, agents and representatives were at all times well aware that the securities purchased from time to time by plaintiff from defendant were purchased for investment purposes only, and denies that at the time of the purchase by plaintiff from defendant of the Longview Local Improvement Districts Bonds in said amended and supplemental complaint described defendant well knew that said purchases were solely for said purpose.

Defendant further denies that its officers, agents and representatives were at all times mentioned in said amended and supplemental complaint well aware as to just what obligations of corporations and others were eligible for investment of life insurance company funds under the laws of the State of Iowa, and denies that the Longview Local Improvement Districts 6% Bonds were the unsecured obligations of a private corporation or that they were sold to said plaintiff as such, but avers the fact to be that said bonds were issued by municipal districts, to-wit: local improvement districts organized under the laws of the State of Washington, and that said bonds are secured by assessments which are levied upon and are liens against the land and improvements thereon located within the several improvement districts; that in
62 addition said bonds were unconditionally guaranteed as to the payment of principal and interest by The Long-Bell Lumber Company, a Missouri corporation.

Defendant denies that at the time of the purchase of said Longview Local Improvement Districts 6% Bonds by said plaintiff the defendant represented to the plaintiff that said bonds were municipal bonds of the type made eligible for investment of life insurance company funds by the laws of the State of Iowa.

5. Defendant admits the statements made in paragraph 5 of said amended and supplemental complaint, except that defendant has no knowledge sufficient to form a belief as to the extent of the plaintiff's knowledge at the

time it purchased said Longview Local Improvement Districts 6% Bonds of the operations and activities of The Longview Company and The Longview Suburban Company, subsidiaries of The Long-Bell Lumber Company, and defendant denies that the activities of said subsidiaries were well known to the defendant at the time of the purchase of said Longview Local Improvement Districts 6% Bonds by the plaintiff.

6. Defendant admits that the City of Longview was laid out on lowlands adjacent to and near the junction of the Cowlitz and Columbia Rivers and that in times of severe flood the site of said city was subject to overflow.

Defendant is advised, and on such information states, that prior to the establishment of the City of Longview there were in existence several diking districts organized under the laws of the State of Washington, which
63 diking districts had constructed dikes and drainage ditches for the protection of the land near the Cowlitz and Columbia Rivers from overflow; that for the purpose of consolidating said diking districts and further extending and improving said series of dikes and drainage ditches the Consolidated Diking District No. 1 of Cowlitz County was organized and that, after the organization of said district, said district by appropriate action caused assessments to be levied upon the property embraced within said district, for the purpose of paying the costs of the construction of said series of dikes and drainage districts, and said Consolidated Diking District No. 1 of Cowlitz County caused bonds in the aggregate face amount of $3,260,000 to be issued, payable out of the proceeds of said assessments.

Defendant admits that a major portion (but not substantially all) of the real estate located within the City of Longview was included within and subject to the assessments levied by said Consolidated Diking District No. 1 of Cowlitz County, and that the bonds issued by said diking district were delivered to The Long-Bell Lumber Company to reimburse it for the moneys actually expended in the construction, enlargement and improvement of said series of dikes and drainage ditches.

Defendant further admits that said bonds of said Consolidated Diking District No. 1 of Cowlitz County were purchased by this defendant from The Long-Bell Lumber Company and were sold by this defendant to dealers and to the public throughout the United States and, within
64 a relatively short time after the issuance and offering of said bonds and long prior to the year 1930, all of

said original issue of bonds had been sold by this defendant; and that said bonds were the obligations of said Consolidated Diking District No. 1 of Cowlitz County and were guaranteed as to principal and interest by The Long-Bell Lumber Company.

Defendant admits that assessments were levied upon all of the real estate embraced within the limits of the City of Longview that fell within said Consolidated Diking District No. 1 of Cowlitz County, but denies that said assessments were burdensome assessments, but avers that the same were levied only to the extent that the property assessed was improved and benefited by the dikes and drainage ditches constructed by said Consolidated Diking District No. 1.

Defendant admits that it at all times after the purchase of said Consolidated Diking District Bonds knew of the existence of said district and of the general territory within Cowlitz County embraced by said district, but defendant denies that, at the time of the sale of said Longview Local Improvement Districts Bonds to the plaintiff, the defendant well knew the extent of the assessments levied in said Consolidated Diking District or the extent to which the same constituted liens upon the real estate against which the assessments were levied.

Defendant has no knowledge or information sufficient to form a belief as to whether the City of Longview was laid out by The Long-Bell Lumber Company upon lands wholly owned by it, or as to whether or not, in the
65 early history of said city, its affairs were wholly dominated and controlled by The Long-Bell Lumber Company, or as to whether or not, for many years after the incorporation of the City of Longview, substantially all the members of the City Council and other officers of the city were employees of The Long-Bell Lumber Company.

Defendant admits that it was advised by The Long-Bell Lumber Company that the plans for the City of Longview contemplated a city with a population which would ultimately be substantially larger than its present population of 10,000 or 12,000 people, but defendant has no information sufficient to form a belief as to whether the officers of The Long-Bell Lumber Company contemplated that the city would, within a very short time, have a population of from 40,000 to 50,000 persons.

Defendant is now advised, although it did not have such information at the time of the sale of said Local Improvement Districts Bonds to the plaintiff, that by provisions

embodied in the plats of said city, said city regulated and restricted the uses to which real estate within said city might be put, and placed restrictions upon said uses substantially as alleged in paragraph 6 of said amended and supplemental complaint.

Defendant further admits that it is now advised, although it did not have such information at the time of the sale of said Local Improvement District Bonds to the plaintiff, that The Long-Bell Lumber Company with its own funds constructed many of the improvements in
66 said local improvement districts, but defendant has no information sufficient to form a belief as to whether said improvements were so constructed by The Long-Bell Lumber Company solely for the purpose of improving its own real estate holdings and to attract persons to Longview and to promote the sale of real estate held by it and its subsidiaries; that defendant is now advised, although it did not have such information at the time of the sale of said Local Improvement Districts 6% Bonds to the plaintiff, that many of said street improvements are constructed adjacent to land which is vacant and unimproved, but defendant has no information sufficient to form a belief as to whether or not the improvements so constructed were adequate for and designed to accommodate the needs of a city having a population of from 40,000 to 50,000 persons.

7. Defendant admits that the allegations in paragraph 7 of said amended and supplemental complaint with respect to the laws of the State of Washington governing the creation and powers of cities and local improvement districts is substantially correct, but defendant has no knowledge or information sufficient to form a belief as to whether or not, in the years 1926 and 1927, The Long-Bell Lumber Company dominated and controlled the City of Longview and its City Council, or as to whether or not it caused and procured the City Council of Longview to create certain local improvement districts within said city and to purchase by condemnation and otherwise the improvements previ-
67 ously constructed in the streets of said city by The Long-Bell Lumber Company, or the extent to which said improvements were originally constructed by The Long-Bell Lumber Company or any of its subsidiaries or by independent contractors.

Defendant admits that the City Council of Longview took the necessary legal steps to create Longview Local Improvement Districts Nos. 1 to 22, inclusive, and that among the local improvement districts so created were the dis-

tricts generally described in said paragraph 7 as Districts Nos. 1, 7, 11, 12, 18 and 19.

Defendant has no knowledge sufficient to form a belief, as to whether or not any of the bonds were delivered to The Long-Bell Lumber Company for improvements previously made by said company.

Defendant admits that it purchased the bonds of said Longview Local Improvement Districts from said The Long-Bell Lumber Company upon the agreement of said The Long-Bell Lumber Company to guarantee the payment of the principal and interest of said bonds, which contract of guaranty is expressed upon the face of each and every of said bonds, and admits that thereafter this defendant sold said bonds to dealers and to the public throughout the United States, and avers that all of said bonds had been so sold and disposed of by this defendant long prior to the year 1930.

68 8. Defendant denies that for more than ten years last past it has been and still is the fiscal agent and banker for The Long-Bell Lumber Company and certain of its associated and subsidiary corporations, and denies that it was ever the banker or fiscal agent for said The Long-Bell Lumber Company or its associated and subsidiary corporations, and denies that at the time plaintiff purchased from the defendant the Longview Local Improvement Districts 6% Bonds referred to in said amended and supplemental complaint plaintiff knew that defendant had been and was acting as the fiscal agent for The Long-Bell Lumber Company, and knew that the defendant was thoroughly familiar with the operations of The Long-Bell Lumber Company both at Longview, Washington, and elsewhere, and denies that the defendant was thoroughly familiar with such operations.

Defendant admits that defendant and its officers knew the financial condition of The Long-Bell Lumber Company, insofar as that knowledge included the amounts of its outstanding funded indebtedness and the encumbrances upon its property and the property of its subsidiaries and the amounts and value of its unencumbered assets, as well as the amounts of the various assessments and bond issues which had been guaranteed by The Long-Bell Lumber Company, and then to the extent, and only to the extent, that such information was furnished in the financial statements of The Long-Bell Lumber Company, which information was equally available to the plaintiff and to all other persons or corporations interested in said The Long-Bell Lumber Company.

69 Defendant admits that it was familiar with the issue of Cowlitz County Consolidated Diking District No. 1 Bonds in the aggregate face amount of $3,260,000, (not $4,000,000, as plaintiff alleges) of which bonds there are now outstanding the face amount of approximately $2,125,500, and admits that it knew that assessments for the payment of said bonds were levied upon all real estate located within said diking district and constituted liens upon the property upon which said assessments were so levied, but defendant denies that it knew, at the time of the sale of said Local Improvement District Bonds to the plaintiff, or that it now knows that the lien of the assessments levied by said Consolidated Diking District No. 1 are equal to or in any respect superior to the liens of the assessments levied by the various local improvement districts in the City of Longview.

Defendant further denies that it was well aware that the City of Longview had been laid out in the expectation that it would shortly have a population of not less than 40,000 persons or that many of the public improvements constructed in said city had been built adjacent to unimproved lands, and denies that the defendant was well aware in 1930 that the City of Longview had not developed in accordance with the expectation of its founders.

Defendant admits that it is advised that the City of Longview had a population in 1930 of between 10,000 and 12,000 persons, but it did not have at the time of the sale of the Local Improvement Districts 6% Bonds and it now has no information sufficient to form a belief as to whether the improvements constructed in said city contemplated
70 and were sufficient to accommodate the needs of a population of approximately 40,000 persons.

Defendant denies that in the year 1930, at the time of the purchase of said Longview Local Improvement District Bonds by the plaintiff, it knew that more than 70% in value of all real estate within the various local improvement districts of said city was owned by The Long-Bell Lumber Company or its subsidiary corporations, but states that defendant was informed and believed that some of the real estate in said districts was owned by the Long-Bell Lumber Company or its subsidiary corporations, the amount thereof being at all times unknown to defendant.

Defendant further avers that if has no knowledge sufficient to form a belief as to whether or not more than 70% in value of such real estate is owned today by The Long-Bell Lumber Company or its subsidiary corporations, but states that defendant has no knowledge of the extent of

ownership of land by The Long-Bell Lumber Company other than that it is informed that the ownership of land within said several districts by The Long-Bell Lumber Company and The Longview Company varies materially in said several districts, ranging from 6.67% up to 100%.

9. Defendant admits that the allegations of paragraph 9 of said amended and supplemental complaint are substantially correct, except that the defendant denies that it well knew, at the time of the sale of the Longview Local Improvement Districts 6% Bonds to the plaintiffs, that the plaintiff relied upon the statements made by the defendant as to the character of and the security behind said
71 bonds, and defendant has no knowledge or information sufficient to form a belief as to whether or not the plaintiff did, in fact, rely upon the representations and statements made by defendant and its agents concerning said bonds, but avers that, prior to the purchase of any of said bonds by the plaintiff, defendant furnished to the plaintiff its entire sales folder containing all of the information upon which the defendant had originally relied in the purchase of said Local Improvement Districts 6% Bonds and which had been used by it in the sale of said bonds to dealers and to its customers, and that defendant is not advised as to what other sources of information regarding The Long-Bell Lumber Company and its subsidiaries were examined by plaintiff prior to the purchase of said bonds, but avers that the financial condition of said The Long-Bell Lumber Company and its subsidiaries was disclosed in all of the financial services, some of which were available to and in the offices of the plaintiff at the time it purchased said Local Improvement Districts 6% Bonds.

10. Defendant admits that at the various times on and after the 17th of May, 1930, and to and including the 26th of February, 1931, the defendant sold to and purchased for the plaintiff, in the regular course of its business transaction with the plaintiff, among other securities, certain of said Longview Local Improvement Districts 6% Bonds, which the defendant from time to time acquired on the open market or through transactions with its various customers, but avers that the said transactions with the
72 plaintiff are not fully or accurately set forth in paragraph 10 of said amended and supplemental complaint, but that said transactions were as follows:

(a) Plaintiff being desirous of disposing of $100,000.00 face amount of 5% short term bonds of the State of Louisiana, known as State of Louisiana Highway 5's, on the 17th day of May, 1930, sold to said defendant $85,000 par

amount of said 6% bonds at 100.37, and as part of said transaction plaintiff purchased from the defendant, on the 17th day of May, 1930, to replace said State of Louisiana Highway 5% Bonds so sold, $85,000. face amount of Longview Local Improvement Districts 6% Bonds, of the districts and serial numbers described in said amended and supplemental complaint.

(b) Thereafter, and on the 26th day of May, 1930, said defendant purchased from said plaintiff an additional $15,000. par amount of said State of Louisiana Highway 5% short term Bonds at 100.36, and to replace said State of Louisiana Highway 5% short term Bonds so sold, said defendant purchased for said plaintiff on the open market $15,000. face amount of said Longview Local Improvement Districts 6% Bonds of the districts and serial numbers set forth in said amended and supplemental complaint.

73 (c) On August 12, 1930, said plaintiff purchased from said defendant the following Longview Local Improvement Districts 6% Bonds:

District Number	Serial Number	Par Value
7	M-102	$1,000.
11	M-620	1,000.
19	M-294 to M-297, inclusive, and M-414 to M-418, inclusive	9,000.
1		
2		4,000.

that before said latter 6% bonds of Districts 1 and 2, in the face amount of $4,000., were delivered, said bonds were called for payment at par, so that said 6% bonds were never delivered to the plaintiff, but were repurchased by the defendant from the plaintiff on the 27th day of September, 1930, at par.

(d) On August 19, 1930, plaintiff purchased from defendant the following Longview Local Improvement Districts 6% Bonds:

District Number	Serial Number	Par Value
12	M-107 to M-109, inclusive,	$3,000.
1	M-272 and M-273	2,000.
11	M-839 to M-840, inclusive, and M-902 to M-904, inclusive,	5,000.

74 (e) On September 26, 1930, plaintiff purchased from defendant the following Longview Local Improvement Districts 6% Bonds:

District Number	Serial Number	Par Value
11	M-905, M-906 and M-841 to M-843, inclusive	$5,000.

(f) On October 7, 1930, plaintiff purchased from defendant the following Longview Local Improvement Districts 6% Bonds:

District Number	Serial Number	Par Value
1	M-390 to M-394, inclusive	$5,000.
18	M-26, M-33 and M-34	3,000.

(g) On October 8, 1930, plaintiff purchased from defendant the following Longview Local Improvement Districts 6% Bond:

District Number	Serial Number	Par Value
20	M-10	$1,000.

(h) That on or about the 16th of October, 1930, said plaintiff then being desirous of selling $200,000. face amount of City of Chicago Tax Anticipation Warrants, which the plaintiff then held and owned, sold said tax anticipation warrants to the defendant at 100.375 plus
75 interest from April 1, 1929 to October 21, 1930, and invested the proceeds of said sale in $200,000. face amount of Longview Local Improvement Districts 6% Bonds of District No. 11, serial numbers M-674 to M-686, M-688 to M-693, M-697 to M-700, M-637 to M-661, M-664 to M-673, M-367 to M-408, M-455 to M-504, and M-546 to M-595, all inclusive.

(i) Thereafter from time to time, usually when Longview Local Improvement Districts 6% Bonds were called for payment, said defendant purchased for said plaintiff small lots of said Longview Local Improvement Districts 6% Bonds to replace the bonds so called for payment as follows:

Date of Purchase	District Number	Serial Number	Par Value
Oct. 28, 1930	11	M-662 and M-663	$2,000.
Jan. 30, 1931	11	M-745 to M-748, inclusive, and M-751 and M-752	6,000.
Jan. 30, 1931	19	M-406 to M-408, inclusive and M-257	4,000.
Jan. 30, 1931	12	M-196	1,000.
Jan. 30, 1931	1	M-340	1,000.
Jan. 30, 1931	6	M-60	1,000.
Feb. 26, 1931	1	M-337 to M-339, inclusive	3,000.

11. As to paragraph 11 of said amended and supplemental complaint, the defendant states that on January 30, 1931 it repurchased from plaintiff $13,000. face amount of Longview Local Improvement Districts 6% Bonds
76 of District No. 19, numbers M-419 to M-431, inclusive, at par and accrued interest, and on March 2, 1931, repurchased from plaintiff $3,000. face amount of Longview Local Improvement Districts 6% Bonds of District No. 17, numbered M-20, M-21 and M-22, at par and accrued interest.

12. As to paragraph 12 of said amended and supplemental complaint, defendant states that, subsequent to the acquisition by the plaintiff of the several Longview Local Improvement Districts 6% Bonds hereinabove referred to, the following numbered bonds in the districts specified were paid at par and interest, and retired from the proceeds of special assessments by the City Treasurer of the City of Longview:

District Number	Serial Number	Amount
7	M-49 to M-53, inclusive	$5,000.
1	M-207 to M-212, inclusive	6,000.
20	M-5	1,000.
1 and 2	(Note: These bonds were never delivered to plaintiff but were repurchased by defendant at par)	4,000.
11	M-367 to M-383 inclusive	17,000.
6	M-60	1,000.

Defendant does not know whether plaintiff, at the time of the commencement of this action, held and owned $308,000. par value of said Longview Local Improvement Districts 6% Bonds; but defendant states that it is informed and believes and upon such information and belief states the fact to be that if at the commencement of this action plaintiff held all bonds originally purchased by it, which had not been retired, then plaintiff held $307,000. par value of said Longview Local Improvement Districts 6% Bonds.

77 13. Defendant denies that, for the purpose of inducing the plaintiff to purchase from the defendant the Longview Local Improvement Districts 6% Bonds hereinbefore referred to and prior to such purchase by the plaintiff, the defendant wilfully, maliciously, fraudulently and falsely wrote to the plaintiff a letter describing said bonds, a portion of which is incorrectly quoted in paragraph 13 of said amended and supplemental complaint.

That prior to May 14, 1930, the defendant had sent to the plaintiff its entire sales folder containing such printed and written data as the defendant had in its possession relating to said Longview Local Improvement Districts 6% Bonds; that on May 14, 1930, in writing a letter to Mr. F. W. Hubbell, one of the officers of said plaintiff, relative to said Local Improvement Districts 6% Bonds, Mr. F. A. Wood, then one of the employees of the defendant, referring to the complete sales file which had theretofore been sent by the defendant to the plaintiff, made the following statement:

"We believe you have before you practically all the data covering this issue of bonds, but if you have any questions in mind, we shall be pleased indeed to have you call Mr. Kelley or this office for anything that you may need.

You observe, of course, that this city has no funded debt, other than these Improvement Bonds, and that the original debt has been materially reduced through retirement and maturity."

78 Defendant denies that, by means of the said statement in said letter, defendant intended to lead, or actually led, the plaintiff to believe that the City of Longview Local Improvement Districts 6% Bonds were the only outstanding bonds constituting a charge or lien upon the lands and property included within the various local improvement districts of said city, but avers that said

plaintiff then had before it all of the data relating to said Longview Local Improvement Districts 6% Bonds and then knew that said bonds were not the obligations or the funded debt of the City of Longview, but were special assessment bonds payable out of the assessments levied against property within the several local improvement districts; that the City of Longview, on the 14th of May, 1930, had no funded debt and the statement by said Wood in his said letter to that effect was true and correct, and is still true.

Defendant admits that defendant knew at the time of the writing of said letter that much of the property included in the City of Longview was also included within the Consolidated Diking District No. 1 of Cowlitz County, but denies that defendant knew that the assessments levied by said consolidated diking district in most instances exceeded in amount the liens of the assessments levied in the local improvement districts, or that the liens thereof were equal to or superior to the liens of the assessments levied in said local improvement districts, and defendant avers that the sale of said Cowlitz County Consolidated Diking District No. 1 Bonds had been given national publicity by the defendant through the mediums of newspaper advertisements and advertisements in
79 financial journals, and the existence of said bonds was also disclosed by the financial statements issued by The Long-Bell Lumber Company subsequent to the issuance and sale of said bonds, copies of which financial statements were furnished to the plaintiff prior to the purchase by it of said Longview Local Improvement District Bonds, so that the fact that said Consolidated Diking District Bonds were outstanding and were guaranteed by The Long-Bell Lumber Company was disclosed by the information furnished to the plaintiff prior to the purchase by it of any of said Longview Local Improvement Districts 6% Bonds. Defendant denies that, by reason of the statements and representations contained in said letter, defendant intended to and did, in fact, lead plaintiff to believe that there were no other facts or circumstances within the knowledge of defendant substantially affecting the value of said Local Improvement Districts 6% Bonds, and particularly that there were no other assessment bonds or assessment liens against the real estate upon which local improvement assessments had been levied, but avers that, as appears from the said letter of May 14, 1930, the defendant then offered and was at all

times ready and willing to furnish any information or to answer any questions that the plaintiff might ask regarding said Local Improvement Districts 6% Bonds. Defendant further denies that it made any partial disclosure of the facts surrounding said issue of bonds, and denies that it was under any obligation more fully and completely to disclose than it did disclose to the plaintiff all of the facts having a bearing upon the value of said Local Improvement District Bonds, and denies that it made
80 any false or fraudulent representations to the plaintiff which deceived or misled the plaintiff with respect to a material fact having a direct bearing upon the value of said securities, but avers as hereinbefore set forth that this defendant gave to the plaintiff all of the material facts in its possession regarding said Local Improvement Districts 6% Bonds prior to the sale of said bonds to the plaintiff, and offered verbally and in writing to obtain for the plaintiff any other information which the plaintiff might desire regarding said bonds. Defendant further denies that it was the duty of the defendant to make a more full and complete disclosure of the facts with respect to said issue of bonds than was made by the defendant to the plaintiff, and denies that the defendant concealed the existence of the lien of diking district assessments and the existence of outstanding Diking District 6% Bonds from the plaintiff, but avers that the existence of said bonds was a matter of public record and had been advertised by the defendant in newspapers and financial publications having national circulation, and was fully disclosed in the printed and written information furnished by the defendant to the plaintiff prior to the purchase of said Local Improvement Districts 6% Bonds. Defendant denies that it falsely and frudulently induced the plaintiff to believe, by anything which it, the defendand, did, that said Local Improvement Districts Bonds constituted a first and prior lien upon the lands and property included within the various local improvement districts of the City of Longview.

81 Defendant denies that, for the purpose of inducing plaintiff to purchase said Longview Local Improvement Districts Bonds, defendant wilfully, maliciously, fraudulently and falsely represented to the plaintiff that the City of Longview, Washington, because of its natural advantages and proximity to the timber stands of The Long-Bell Lumber Company and the Weyerhaeuser interests, had been selected as the site for the vast lumber

manufacturing plants of both said companies, and that the world's largest lumber mills were located at Longview, and that said Local Improvement Districts Nos. 11 and 19 embraced within their limits all of the property within the City of Longview, and denies that by means of said alleged representations and statements defendant led plaintiff to believe that the vast lumber mills of said The Long-Bell Lumber Company and of the Weyerhaeuser interests were located within said local improvement districts and were subject to the payment of assessments out of which the Local Improvement Districts 6% Bonds would be paid, but avers that in the original circular issued by the defendant at the time of the sale by defendant to its customers of the Longview Local Improvement Districts 6% Bonds was included a statement of the City of Longview and its commercial prospects and possibilities, which statement was taken from official sources or was based on information which defendant regarded as reliable and upon which defendant relied in the original purchase of said Longview Local Improvement Districts 6% Bonds from The Long-Bell Lumber Company.

Said statement read as follows:

82 "Longview is situated about 133 miles south of Seattle at the confluence of the Columbia and Cowlitz Rivers. It has a frontage of 7¼ miles on the former, and is a port of call for ocean-going vessels midway between Portland and the Pacific Ocean. Excellent rail transportation is furnished by four railroads and the Longview docks are accessible to the largest ocean-going vessels. The Columbia, which ranks second among the rivers of the United States both in length and volume of water, is from 2,500 to 3,500 feet wide and 30 to 65 feet deep at this point, forming a turning basin in which the largest cargo ships may turn under their own power. Because of its natural advantages and proximity to the timber, stands of the Long-Bell and Weyerhaeuser interests, Longview was selected as the site for the vast lumber manufacturing plants of these companies. The present output of the Long-Bell plants is 1,800,000 board feet per day. The Weyerhaeuser plants are under construction. Manufacturing plants have also been erected by other concerns, including the Longview Concrete Pipe Co., the Pacific Straw Paper & Board Company, the Magor Car Corporation, the Standard Oil Company, Longview Paint & Varnish Co. and the Central Mill Works. The first unit of the plants of the Longview Fibre Company, to cost 2½

million dollars, is now well under way. Longview, with a population of 12,000, has now more than 36 miles of concrete paved streets, 115 miles of graded and gravelled streets, 71 miles of concrete sidewalks, 56 miles of water mains, and 48 miles of storm and sanitary sewers. The city has been laid out along model lines, and has excellent schools, a motorized fire department, a thoroughly modern hospital, library, community Y. M. C. A., and other public buildings. Two banks report combined deposits of $1,500,000 and over 4500 depositors."

That the foregoing statement was not intended to describe and does not, by its terms, purport to describe the properties located within any of the several local improvement districts of the City of Longview, but merely purports to give a general description of the commercial activities and possibilities of the Longview community, and as such is, so defendant is advised, true and cor-
83 rect. That the fact as to whether or not said lumber mills of The Long-Bell Lumber Company and the Weyerhaeuser interests were or were not located within the city limits of the City of Longview was not known to the defendant and did not come to its knowledge or attention until after the sale of said Local Improvement Districts 6% Bonds to the plaintiff.

Defendant denies that it wilfully, fraudulently and falsely represented to plaintiff that manufacturing and industrial plants had been erected at Longview by the Longview Concrete Pipe Co., Pacific Strawboard & Paper Company, Magor Car Corporation, Standard Oil Company, Central Mills Works, and Longfibre Company, and that the industrial plants of the companies named were included within the limits of the City of Longview and were subject to assessment in Districts Nos. 11 and 19, and denies that it was well known to the defendant, at the time of the sale of said Longview Improvement Districts 6% Bonds to the plaintiff, that none of said industries was located within the limits of the City of Longview, but avers that the only representation made by the defendant was that contained in the circular, the material portions of which are set forth above, and that said statement was not intended to describe and does not, by its terms, purport to describe properties located with-
84 in any of the several local improvement districts of the City of Longview, but merely purports to give a general description of the commercial activities and possibilities of the Longview community and as such is,

so defendants is advised, true and correct; that defendant had no knowledge as to whether or not any of the said industries were located within the corporate limits of the City of Longview until long after the sale to the plaintiff of said Longview Local Improvement Districts 6% Bonds, and that defendant is advised, and on such information states, that of the companies above named the manufacturing industrial plant of The Longview Concrete Pipe Co. is located within the limits of the City of Longview.

Defendant denies that it wilfully, fraudulently and falsely represented to the plaintiff that the City of Longview had a frontage of 7¼ miles upon the Columbia River and that said city was a port of call for ocean-going vessels midway between Portland and the Pacific Ocean, and denies that defendant falsely and fraudulently represented to the plaintiff that Districts Nos. 11 and 19 embraced all of the lands lying within the limits of the City of Longview, but avers that the only representation made by the defendant was that contained in the circular, material portions of which are quoted above, and that said statement was not intended to describe and does not, by its terms, purport to describe properties located within any of the several local improvement districts of the City of Longview, but merely pur-
85 ports to give a general description of the commercial activities and possibilities of the Longview community, and as such is, so defendant is advised, true and correct; that in truth and in fact the City of Longview is a port of call for ocean-going vessels and the "port of Longview" docks are within the limits of the City of Longview.

14. Defendant denies that, for the purpose of inducing plaintiff to purchase bonds of the various local improvement districts, defendant stated and represented to plaintiff that it had furnished to plaintiff all information concerning the local improvement districts of said city then in its possession, and denies that it led plaintiff to believe that it had furnished full, complete and accurate information as to said City of Longview, Washington, but avers on the contrary that the defendant, after having furnished to plaintiff its complete sales file containing the data and information upon which defendant relied in purchasing said Longview Local Improvement Districts 6% Bonds and in preparing said bond circular, merely advised the plaintiff that it believed that the plaintiff then had before it practically all the data covering this issue of bonds, but requested the plaintiff, if it had any questions in mind, to call upon the representatives of the defendant for anything

that the plaintiff might need. Defendant denies that, having made some representations, it was the duty of the defendant to disclose to the plaintiff all the facts sur-
86 rounding the City of Longview and not to withhold any material information concerning said city or the various issues of bonds, and avers that, so far as defendant knows, it did not withhold any material information concerning said City of Longview and said issue of bonds from the plaintiff, but on the contrary was willing and offered to furnish the plaintiff any additional information which the plaintiff might request and which it was possible for the defendant to obtain concerning said Longview Local Improvement Districts 6% Bonds. Defendant denies that this defendant did not accurately state the facts as to said Longview Local Improvement Districts 6% Bonds and the security behind them, and denies that the defendant, by representations made or by wilfully, falsely and fraudulently concealing from the plaintiff any material facts with respect to the City of Longview and the Longview Local Improvement Districts 6% Bonds, deceived and misled the plaintiff with respect to: (1) the alleged fact that the founders of the City of Longview had laid out the city to accommodate a population of at least 40,000 persons and had constructed local public improvements in said city to provide for the needs of approximately 40,000 persons; (2) the alleged fact that the City of Longview had been laid out in zones or districts, with vast unimproved and wholly vacant areas of land lying between the various districts or zones of said city, and that local public improvements had been constructed and assessments therefor had been levied against vacant and unimproved lands lying between the various improved portions of the city; or (3) the alleged fact that the value of the vacant and unimproved land subject to assessment within the local improvement districts
87 was much less than the amounts of the combined local improvement and consolidated dike assessments levied against such lands; or (4) the alleged fact that a large portion of all the real estate located within the City of Longview was owned by The Long-Bell Lumber Company or its subsidiaries, and that substantially all of the vacant and unimproved property subject to assessment within the boundaries of the local improvement districts was owned by The Long-Bell Lumber Company or its subsidiaries, and that because of the large and burdensome assessments levied in connection with Consolidated Diking District No. 1 of Cowlitz County the combined assessments against the said real estate largely exceeded the actual value thereof,

so that the only security for the payment of said bonds was, in fact, the security furnished by the guaranty of The Long-Bell Lumber Company; and denies that said alleged facts were known to the defendant at the time of the sale of said Local Improvement Districts 6% Bonds to the plaintiff, and denies the truth and accuracy of said alleged facts.

15. Defendant admits that it represented to the plaintiff that said Longview Local Improvement Districts 6% Bonds were unconditionally guaranteed as to payment of principal and interest by The Long-Bell Lumber Company, and avers that said bonds were so guaranteed, and admits that, in connection with the other documents and data furnished to the plaintiff, the defendant gave to the plaintiff a balance sheet of The Long-Bell Lumber Company showing the financial condition of said Lumber Company and of The Long-Bell Lumber Corporation as of January 1, 1930, and admits that said statement disclosed that
88 The Long-Bell Lumber Company had current assets in an amount substantially twice its current liabilities, but defendant denies that it ever stated or represented to the plaintiff that it had furnished to plaintiff "all the data covering this issue of bonds", and avers that the only statement made was that heretofore quoted in this answer. Defendant denies that, by means of said alleged representations or any representations, defendant led plaintiff to believe that defendant had disclosed to plaintiff all the facts then known to it concerning The Long-Bell Lumber Company, and that defendant falsely and fraudulently led plaintiff to believe that the financial condition of said The Long-Bell Lumber Company and The Long-Bell Lumber Corporation was not substantially different at the time the financial statement of January 1, 1930, was exhibited to plaintiff from the financial condition of said corporation as of the date of said statement, but avers that it made no representations to the plaintiff whatsoever concerning the financial condition of The Long-Bell Lumber Company other than to furnish the plaintiff with said financial statement, which spoke of the condition of said Lumber Company and Lumber Corporation as of January 1, 1930. Defendant denies that it wilfully, fraudulently and falsely concealed from the plaintiff the fact that The Long-Bell Lumber Company was, at the times of the purchase of the Local Improvement District 6% Bonds by the plaintiff, in financial difficulties, and denies that said The Long-Bell Lumber Company or said The Long-Bell Lumber Corporation were, so far as this defendant knew, in financial difficulties at the times of the sale of said Local Improvement

District 6% Bonds to the plaintiff, and denies that
89 loans due by The Long-Bell Lumber Company to commercial banks in excess of $3,000,000. had been called for payment by said banks at any of said times, and avers that defendant did not learn of the transfer by The Long-Bell Lumber Company of certain of its free and unencumbered assets to The Long-Bell Lumber Sales Corporation in exchange for all of the capital stock of said The Long-Bell Lumber Sales Corporation and the assumption by said Sales Corporation of the bank indebtedness of the Lumber Company until after the sale by the defendant to the plaintiff of said Longview Local Improvement Districts 6% Bonds, with the exception of the few bonds that were sold to the plaintiff in the year 1931. Defendant denies that it well knew that, if the transfer of the liquid and unencumbered assets of The Long-Bell Lumber Company to a new corporation were carried out, The Long-Bell Lumber Company would be stripped of its working capital and left without sufficient liquid assets to meet the guaranty of the principal and interest upon the Longview Local Improvement Districts 6% Bonds, and denies that defendant was advised of all of said facts, but falsely and fraudulently concealed the same from the plaintiff, but avers that, at the time of the organization of The Long-Bell Lumber Sales Corporation and the transfer of certain of its assets in November of 1930, the facts with respect thereto appeared in the various trade papers and publications of commercial and financial reporting agencies and were as readily available to the plaintiff as to the defendant, and defendant denies that it was obligated to and should have disclosed to the plaintiff
the facts with respect to the organization of The Long-
90 Bell Lumber Sales Corporation after such facts came to the notice of the defendant, and avers that the transfer of certain free and unencumbered assets of The Long-Bell Lumber Company to The Long-Bell Lumber Sales Corporation did not deprive The Long-Bell Lumber Company of any property or assets but merely converted a portion of the assets of the Lumber Company into capital stock of The Long-Bell Lumber Sales Corporation, all of which was owned and held by The Long-Bell Lumber Company, and which capital stock was available for the payment of the claims of creditors of The Long-Bell Lumber Company, and that in truth and in fact The Long-Bell Lumber Sales Corporation was operated merely as the sales department of The Long-Bell Lumber Company, and The Long-Bell Lumber Company continued to function in the same manner as it had functioned before said transfer.

Defendant has no information sufficient to form a belief as to whether or not, while negotiations between plaintiff and defendant for the purchase by the plaintiff of the Local Improvement Districts 6% Bonds were pending, The Long-Bell Lumber Company was arranging to form a corporation known as The Long-Bell Lumber Sales Corporation, but denies that such plan was known to the defendant or its officers. Defendant admits that The Long-Bell Lumber Company did cause a new corporation to be organized known as The Long-Bell Lumber Sales Corporation, and did, on the 9th of December, 1930, transfer to such new corporation certain of its inventories of finished lumber and materials and all of its retail yards, but denies that said The Long-Bell Lumber Company transferred all of its cash or substantially all of its unencumbered property, but
91 avers the fact to be that said The Long-Bell Lumber Company had over $1,000,000. of free cash and other assets not covered by any lien or mortgage and subject to sale or disposition at its will of a book value in excess of $30,000,000. at the time of the organization and transfer of certain assets to The Long-Bell Lumber Sales Corporation. Defendant denies that the transfer was actually effected prior to the purchase of $200,000 of said Longview Local Improvement Districts 6% Bonds and that such fact was known to the defendant, and that the defendant falsely and fraudulently concealed such fact from the plaintiff, but avers, as hereinbefore alleged, that the transfer of assets to the Sales Corporation did not occur until the 9th day of December, 1930. Defendant denies that, by reason of the transfer of certain assets of The Long-Bell Lumber Company to The Long-Bell Lumber Sales Corporation, The Long-Bell Lumber Company was stripped of all of its working capital and of all of its liquid assets and then had no means with which to meet the installments of assessments upon the real estate owned by it at Longview out of which the Local Improvement Districts 6% Bonds were payable, but avers that The Long-Bell Lumber Company had substantial free assets as hereinabove set forth after the transfer of certain assets to The Long-Bell Lumber Sales Corporation, and continued to pay substantial amounts on account of assessments upon the real estate owned by it at Longview for a long period of time after December 9, 1930, and defendant denies that The Long-
92 Bell Lumber Company became and was wholly unable to pay installments of assessments levied upon its real estate at Longview until the condition of the lumber industry became such that The Long-Bell Lumber Company

was unable to operate except at a great loss and, as a result thereof, was required to conserve its cash resources and to cease the payment of real estate taxes.

16. Defendant admits that in June, 1934, The Long-Bell Lumber Company filed a petition for corporate reorganization in the United States District Court, for the Western District of Missouri, at Kansas City, Missouri, under the provisions of Section 77B of the Federal Bankruptcy Act as amended, pursuant to a plan for the readjustment of its capital structure, which was then well known to the plaintiff and had been discussed with the plaintiff on numerous occasions prior to the filing of said petition. Defendant admits that said petition was duly approved by the United States District Court, for the Western District of Missouri, and that in March, 1935, The Long-Bell Lumber Company filed its formal Plan of Reorganization, which Plan provided, among other things, that The Long-Bell Lumber Company should be relieved of the guaranty of principal and interest upon the Longview Local Improvement Districts 6% Bonds, and that the holders of said bonds should receive in lieu of such guaranty 8.4 shares of the common capital stock of the reorganized The Long-Bell Lumber Company for the guaranty of The Long-Bell Lumber
93 Company upon each $1000.00 of Local Improvement Districts 6% Bonds. Defendant admits that said proposed Plan provided that the bank creditors of The Long-Bell Lumber Sales Corporation should receive ten year notes for the full amount of said bank obligations, and admits that the plaintiff filed objections to said Plan of Reorganization claiming to represent $308,000. face amount of said Longview Local Improvement Districts 6% Bonds, and that said objections were overruled by the court after full hearing thereof, and the Plan of Reorganization was ratified, approved and confirmed by the court. Defendant further admits that, by the terms of said reorganization plan, plaintiff became entitled to 8.4 shares of new common stock of the reorganized The Long-Bell Lumber Company for each $1,000. Longview Local Improvement Districts 6% Bond held by it and that, under the terms of the order and decree of the court the stock allocated to the Longview Local Improvement Districts bondholders is held in trust by a trust company in Kansas City, Missouri, and that said trust provided that the holders of said Longview Local Improvement Districts 6% Bonds might within a given period withdraw said 8.4 shares of stock from said trust or, if they elected so to do, might allow said shares to remain in said trust, with the privilege of receiving additional com-

mon stock represented by the stock allocable to such of said Local Improvement Districts 6% Bonds as were, after the making of said trust agreement, paid and retired out of the proceeds of assessments collected upon the property located in said several local improvement districts. Defendant admits that, until the termination of said trust, it is impossible to determine how much more common stock than 8.4 shares for each $1,000. Local Improvement
94 Districts 6% Bond the plaintiff will be entitled to receive. Defendant denies that the actual value of the stock to which the plaintiff was entitled and which it could have withdrawn and sold on the market does not exceed $10,000., but avers the fact to be that said stock has sold in the market at $30 per share and that the present market price of said stock is approximately $27. per share, or approximately $243. for each $1,000. bond.

17. Defendant admits that, after the approval of said Plan of Reorganization, The Long-Bell Lumber Company paid in full the remaining Local Improvement Districts assessments upon its improved properties at Longview, Washington, including both the diking district assessments and the Longview local improvement districts assessments; that the payment of said assessments was made pursuant to an agreement between The Long-Bell Lumber Company and the plaintiff, the exact details of which are not known to the defendant, but in substance said agreement provided that the plaintiff would dismiss its appeal from the final decree entered in said proceedings pending in the United States District Court, for the Western District of Missouri, and in consideration thereof The Long-Bell Lumber Company agreed to pay the counsel for the plaintiff a substantial attorney's fee and, in addition thereto, apply the sum of approximately $377,000. in cash to the payment of local improvement districts assessments and diking district assessments on the improved properties of The Long-Bell Lumber Company and its subsidiaries located in said local improvement districts and said diking district. Defendant is advised, and on such information states the fact to be that, as a result of the payment of local improve-
95 ment districts assessments made by The Long-Bell Lumber Company and its subsidiaries, as well as the payments made by other property owners in said districts, a total of $143,000. face amount of said Longview Local Improvement Districts 6% Bonds have been paid and retired since the entry on September 23, 1935 of said final decree in said The Long-Bell Lumber Company reorganization proceeding, and that since said date the following Longview

Local Improvement Districts 6% Bonds owned by the plaintiff have been paid and retired:

District Number	Bond Number	Amount
1	213-215	$ 3,000.
11	384-408	25,000.
12	107-109 and 114	4,000.
17	14-18	5,000.
20	10	1,000.
		$38,000.

That defendant does not know whether the plaintiff still holds two hundred sixty-six (266) of said Longview Local Improvement Districts 6% Bonds, (but defendant is informed and believes and upon such information and belief states the fact to be that plaintiff holds two hundred sixty-nine (269) Longview Local Improvement Districts 6% Bonds), or as to whether or not the interest on bonds in Districts Nos. 7, 12, 18 and 19 are now in default, or whether interest on the bonds of Districts Nos. 1 and 11 is about to become in default, and defendant denies that the bonds purchased by the plaintiff from the defendant are not collectible, in substantial part at least, from the sources upon
96 which plaintiff relied at the time of the purchase of said bonds, and denies that the bonds purchased by the plaintiff at the time of the purchase thereof were worth not to exceed $86,000.00, but avers that none of the Local Improvement Districts 6% Bonds, including any which plaintiff now holds, are not now nor have they at any time been in default as to principal, and further avers that the Local Improvement Districts 6% Bonds purchased by plaintiff were worth the amount paid by the plaintiff therefor.

18. Defendant denies that the plaintiff relied solely upon the representations of the defendant with respect to said Longview Local Improvement Districts 6% Bonds and, without independent investigation on its part, purchased the same from the defendant. Defendant admits that the amount paid to the plaintiff for said bonds was approximately the sum of $336,157.50, in the manner and at the times hereinbefore set forth.

19. Defendant denies that, by reason of the alleged false, fraudulent and malicious representations made by defendant, plaintiff has been damaged in the sum of $250,-

157.50 or any other sum or sums whatsoever, and denies that it falsely, fraudulently and maliciously represented any facts to the plaintiff, and denies that the plaintiff has demanded payment of said alleged damages, and denies that the plaintiff is entitled to judgment against the defendant in the sum of $250,157.50, or in any other sum or sums whatsoever, and denies that the plaintiff is entitled to recover interest at 6% per annum or at any other rate from August 4, 1934, or from any other date upon its alleged claim for damages.

97 II.

For a further and separate defense to the said amended and supplemental complaint, defendant says:

1. Sometime prior to July, 1931, said plaintiff, through its officers and agents, visited the City of Longview, Washington, thoroughly investigated said Local Improvement Districts 6% Bonds and all of the facts and circumstances surrounding the same, the location of said several local improvement districts, the boundaries of the City of Longview, Washington, the location of the plants of The Long-Bell Lumber Company, the Weyerhaeuser Timber Company, and the other industries reference to which is made in said complaint, the character of the improvements and property located within the several local improvement districts, and the then status of said Local Improvement Districts 6% Bonds as to payment of interest and retirement of principal.

2. In the month of June, 1931, plaintiff requested that defendant furnish to plaintiff information as to the percentage of land owned by The Long-Bell Lumber Company, The Longview Company and The Longview Suburban Company in the several Longview Local Improvement Districts, and this information was obtained by defendant from The Long-Bell Lumber Company and furnished to the plaintiff as soon as possible, to-wit: sometime in the month of August, 1931.

3. After the organization of The Long-Bell Lumber Sales Corporation and after the transfer to it of cer-
98 tain of the free and unencumbered assets of The Long-Bell Lumber Company in, to-wit: the month of December, 1930, information regarding said transfer was contained in various trade publications and financial services issued during said month, some of which were received in due course and examined by the officers, agents or employees of the plaintiff.

4. In the data furnished by the employees of the defendant to the plaintiff prior to the purchase by the plaintiff from the defendant of said Longview Local Improvement Districts 6% Bonds is contained information regarding the Cowlitz County Consolidated Diking District No. 1 bond issue and the amount of said bonds outstanding and the fact that said bonds were guaranteed as to principal and interest by The Long-Bell Lumber Company, all of which facts were known to the plaintiff and to its Investment Committee prior to the purchase by the plaintiff of said Longview Local Improvement Districts 6% Bonds.

5. By reason of the foregoing facts, the plaintiff became and was, by August of 1931, fully informed of all of the facts now alleged in its said complaint, yet the said plaintiff, although constantly in touch with the defendant, through its representatives, made no complaint to the defendant that it had been induced to purchase said Longview Local Improvement Districts 6% Bonds by reason of any false representations made by the defendant, or by reason of the concealment by the defendant from
99 the plaintiff of any material facts known to the defendant, but on the contrary admitted to the representatives of the defendant that it had no complaint against the defendant with respect to the sale of said bonds, and said plaintiff made no complaint to the defendant regarding said alleged misrepresentations and said alleged concealments of material facts until, to-wit: on or about the 4th day of August, 1934, and until after The Long-Bell Lumber Company had filed in the United States District Court, for the Western Division of the Western District of Missouri, a petition for relief under the amendment to the National Bankruptcy Act known as Sections 77A and 77B, and until The Long-Bell Lumber Company had defaulted in the payment of interest on its first mortgage bonds and The Longview Company, The Longview Suburban Company and The Long-Bell Lumber Company had defaulted in the payment of taxes and assessments upon lands owned by them or some of them located in said local improvement districts, by reason whereof the market value of said Local Improvement Districts 6% Bonds had materially decreased; by reason whereof said plaintiff is now estopped to assert against defendant its said alleged claim for damages and has waived its said alleged claims that false representations were made by the defendant to the plaintiff and material facts concealed by the defendant from the plaintiff at and

before the sale by the defendant to the plaintiff of said Longview Local Improvement Districts 6% Bonds.

Halsey, Stuart & Co. Inc.,
By R. E. Simond,
Its Vice President.

Poppenhusen, Johnston, Thompson & Raymond,
Attorneys for said Defendant.

100 United States of America
Northern District of Illinois } ss.
Eastern Division

Robert E. Simond, being first duly sworn, on oath deposes and says that he is a Vice President of Halsey, Stuart & Co., Inc., defendant in the above entitled cause; that he has read the foregoing Answer by him subscribed, is familiar with the facts therein contained, and that the same are true, except as to such matters therein contained which are alleged to be stated upon information and belief, and as to such matters affiant believes them to be true; and affiant further states that, as to those allegations contained in said Answer wherein it is stated that defendant does not have sufficient information upon which to base a belief as to the truth or falsity of certain allegations contained in the complaint, this affiant states that the defendant does not have such information.

R. E. Simond.

Subscribed and sworn to before me this 29th day of April, A. D. 1937.

William A. Conroy,
(Seal) *Notary Public.*

Filed June 14, 1937.

101 And on, to wit, the 14th day of June, 1937, came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Replication in words and figures following, to wit:

102 In the District Court of the United States.

* * (Caption—44353) * *

REPLICATION.

Equitable Life Insurance Company of Iowa, plaintiff herein, for reply to the answer of Halsey, Stuart & Co., to the amended and supplemental complaint of plaintiff herein, states and shows the court as follows:

1. Plaintiff denies all of the defensive allegations set forth in the defendant's answer, except those herein admitted or otherwise answered to.

2. For its reply to the allegations of paragraph 9 of said answer plaintiff denies that defendant furnished to plaintiff its entire sales folder containing all the information upon which the defendant had originally relied in the purchase of said Local Improvement District Bonds, and plaintiff further denies that the true financial situation of the Long-Bell Lumber Company and its subsidiaries was disclosed in published financial services. Plaintiff avers that the true financial situation of the Long-Bell Lumber Company and its subsidiaries was not disclosed by the financial statements of the Long-Bell Lumber Company issued as of January 1, 1930, and further alleges that the
103 true financial situation of the Long-Bell Lumber Company and its subsidiaries was not disclosed in any generally published statements made available to the public at the time of the purchase of said Longview Local Improvement District Bonds from defendant by plaintiff herein; that the true financial situation of the Long-Bell Lumber Company and its subsidiaries was known to defendant, but was concealed from plaintiff, as alleged in plaintiff's amended and supplemental complaint.

3. For reply to paragraph 10 of defendant's answer plaintiff denies that defendant purchased for the account of the plaintiff in the regular course of its business transactions certain of said Longview Local Improvement District 6% Bonds, and avers that defendant first offered to plaintiff a block of $85,000 par value of said Longview Local Improvement District Bonds, and solicited the purchase of same by this plaintiff, as alleged in plaintiff's amended and supplemental complaint. Plaintiff admits that on or about the 17th day of May, 1930, an exchange of State of Louisiana 5% Bonds for Longview Local Improvement District Bonds was made between plaintiff and defendant, and that on or about the 26th day of May, 1930, an exchange was effected between the parties by which plaintiff delivered $15,000 par value of highway bonds of the State of Louisiana and received from defendant Longview Local Improvement District Bonds. Plaintiff admits that from time to time the defendant advised plaintiff and its officers that it had acquired certain of said Longview, Washington Local Improvement District Bonds, and solicited the purchase of the same by plaintiff, but plaintiff denies that defendant purchased any of said bonds for the account of the plaintiff herein.

104 4. For reply to the new matters set forth in paragraph 13 of the defendant's answer, the plaintiff denies that the existence of Cowlitz County Consolidated Diking District No. 1 Bonds was disclosed by financial statements issued by the Long-Bell Lumber Company subsequent to the issuance and sale of said Diking District Bonds, and particularly denies that copies of such financial statements were furnished to plaintiff by defendant prior to the purchase by plaintiff of any of said Longview Local Improvement District Bonds; plaintiff specially denies that the fact that Consolidated Diking District Bonds are outstanding and were guaranteed by the Long-Bell Lumber Company was disclosed by the information furnished to plaintiff by the defendant at any time prior to the purchase of said Longview Local Improvement District Bonds. Plaintiff denies that the existence and location of said Cowlitz County Consolidated Diking District No. 1 Bonds was fully disclosed in the printed and written information furnished by defendant to plaintiff prior to the purchase of said Local Improvement District 6% Bonds by plaintiff herein, and denies that any advertising of the defendant pertaining to said bonds was furnished to or disclosed to the plaintiff in connection with negotiations leading up to the purchase of said Local Improvement District Bonds by the Plaintiff.

5. For reply to the allegations set forth in paragraph 14 of defendant's answer, plaintiff denies that defendant furnished to it defendant's complete sales file containing data and information upon which defendant relied in the purchase of said Longview Local Improvement District Bonds.

105 6. For reply to the allegation of Division II of defendant's answer plaintiff states and shows the court as follows:

Plaintiff admits that in June, 1931, it sent a representative of its bond department to the City of Longview, Washington. Plaintiff denies that said agent and employe thoroughly investigated said Local Improvement District Bonds and learned all the facts surrounding the same at that time. Plaintiff avers that the representative of the plaintiff's bond department spent only a portion of one day at Longview, but that said representative did not at that time learn of the fact that there were outstanding bonds of Cowlitz County Consolidated Diking District No. 1, which constituted a lien upon substantially all of the property upon which assessments for local improvements in the various Local Improvement Districts of said city

had been levied. Plaintiff specially denies that at that time it learned all the facts and circumstances surrounding the said Longview Local Improvement District Bonds, and avers the fact to be that it did not learn of the existence of the Cowlitz County Consolidated Diking District No. 1 Bonds until the year 1934. Plaintiff admits that in June, 1931, it requested defendant to furnish information as to the percentage of lands owned by the Long-Bell Lumber Company and its subsidiaries in the several Longview Local Improvement Districts, and admits that certain information with respect thereto was furnished by defendant to plaintiff in August, 1931. Plaintiff denies that it received information concerning the
106 transfer of the free and unencumbered assets of the Long-Bell Lumber Company to the Long-Bell Lumber Sales Corporation in December, 1930. Plaintiff expressly denies that the existence and location of Cowlitz County Consolidated Diking District No. 1 was disclosed to plaintiff by the defendant and its employes prior to the purchase by plaintiff from the defendant of said Longview Local Improvement District Bonds, and denies that plaintiff had knowledge that the Cowlitz County Consolidated Diking District Bonds were outstanding, and the assessments levied in said district were liens upon the real estate embraced within the various Local Improvement Districts of the City of Longview, Washington, long prior to the purchase by the plaintiff of said Longview Local Improvement District Bonds. Plaintiff denies that in August, 1931, the plaintiff was fully informed of all facts now alleged in its amended and supplemental complaint, and expressly avers that the true facts with respect to said Longview Local Improvement District Bonds were not known to plaintiff and its officers until about June 15, 1934, at which time the vice president and treasurer of plaintiff met with certain representatives of the Long-Bell Lumber Company and of the defendant herein at Longview, Washington. Plaintiff expressly denies that it is estopped to complain of the false and fraudulent representations made to plaintiff, and alleges the fact to be that the defendant has not changed its position to its detriment with respect to said Local Improvement District Bonds, and that defendant may not for such reason among others rely upon any claim of estoppel against plaintiff herein.

For further reply to Division II of said answer of defendant, plaintiff denies that it admitted to the repre-
107 sentatives of defendant that it had no complaint against defendant with respect to the sale of said

bonds, and denies that it made no complaint to the defendant regarding said alleged misrepresentations until on or about the 4th day of August, 1934, and alleges the fact to be that prior to the month of June, 1934, as hereinbefore alleged, plaintiff and its officers were never aware of the true facts with respect to said Longview Local Improvement District Bonds. Plaintiff denies that it waived any claim for damages as alleged in Division II of defendant's answer.

Wherefore, plaintiff prays as in its amended and supplemental complaint.

Equitable Life Insurance Company of Iowa,
By F. W. Hubbell,
Vice President and Treasurer.
By Montgomery, Hart, Pritchard & Herriott,
Gamble, Read & Howland,
Attorneys for Plaintiff.

State of Iowa, } ss.
County of Polk. }

F. W. Hubbell being first duly sworn on oath states that he is Vice President and Treasurer of Equitable Life Insurance Company of Iowa, plaintiff in the above entitled cause; that he has read the foregoing Replication; that he is familiar with the facts therein set forth, and that the facts therein stated are true, as he verily believes.

F. W. Hubbell.

Subscribed and sworn to before me this 9th day of June, 1937, by F. W. Hubbell.

J. H. Martin,
Notary Public in and for Polk County, Iowa.

(J. H. Martin)
(Iowa)
(Notarial Seal)

108 And on, to wit, the 4th day of April, 1939, came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Amendment to its Answer in word and figures following, to wit:

109 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Apr. 4, 1939.
* * (Caption—44353) * *

AMENDMENT TO DEFENDANT'S ANSWER TO AMENDED AND SUPPLEMENTAL COMPLAINT.

Now comes Halsey, Stuart & Co., defendant, by Poppenhusen, Johnston, Thompson & Raymond, its attorneys, and by leave of Court first had and obtained files instanter its amendment to its answer to the amended and supplemental complaint heretofore filed herein amending said answer as follows:

1. By substituting for the first paragraph on page 25 of said answer, being a part of paragraph 13 of said answer, for the sentence beginning "That the fact as to whether or not said lumber mills", the following sentence:

"That the fact as to whether or not said lumber mills of The Long-Bell Lumber Company and the Weyerhaeuser interests were or were not located within the city limits of the City of Longview was not known to the defendant and did not come to its knowledge or attention until just prior to the sale of said $200,000 face amount of District No. 11 Longview Improvement Districts Bonds to the plaintiff, at which time defendant, at the request of plaintiff, obtained said information from The Long-Bell Lumber Company and transmitted said information to the plaintiff."

Halsey, Stuart & Co.,
By Poppenhusen, Johnston, Thompson & Raymond,
Its Attorneys.

Poppenhusen, Johnston, Thompson & Raymond,
11 South La Salle Street,
Chicago, Illinois,
Attorneys for Defendant.

131 And on, to wit, the 19th day of July, 1939, came the Defendant-Appellant by its attorneys and filed in the Clerk's office of said Court a certain Transcript of Proceedings in words and figures following, to wit:

Filed July 19, 1939.

NARRATIVE TRANSCRIPT OF PROCEEDINGS IN EQUITABLE LIFE INSURANCE COMPANY OF IOWA *vs.* HALSEY, STUART & CO.

ROBERT E. SIMOND, called as a witness by the plaintiff under Rule 43-B, being first duly sworn, testified as follows:

Direct Examination by Mr. Gamble.

My name is Robert E. Simond and I live in Chicago, Illinois. I am a Vice President of Halsey, Stuart & Co. and have been one about ten years. My duties are to buy original issues of municipal bonds which we redistribute. Before starting with Halsey, Stuart & Co. in 1911 I had no other position. I have been in charge of buying municipals only since 1929. In 1925 I was an assistant to the Vice President then in charge of the Department, Mr. W. I. Sleep, who is no longer alive. I succeeded him.

I learned of the probable issue of Longview, Washington, Local Improvement District Bonds, prior to the issue of any such bonds in 1925, during our negotiations with Long Bell. These bonds were bought by Mr. Sleep from Long Bell.

Mr. C. E. Lombardi, with whom I am only acquainted, I do not know that I would know him by sight, was an attorney in Longview for the Long Bell Lumber Company. I corresponded with Mr. Lombardi in the summer of 1925 relative to the progress being made by the Public Improvement Contractors at Longview and relative to the possibility of the issuance of Longview Local Improvement District Bonds. This was after we had bought the initial issue. Mr. Sleep was in Longview in the summer of 1925 and he entered into a contract with the Long Bell Lumber Company for the purchase of the first of the Longview, Washington, Local Improvement District Bonds. I don't know whether the contract was signed in Longview, or in Kansas City.

Q. Did you have any correspondence with Mr. Lombardi in the summer of 1925 with respect to the form of bonds to be issued.

Mr. Johnston: If the Court please, I don't want to interrupt the preliminary questions, but I fail to see the relevancy of this evidence?

We are proceeding here upon alleged express represen-

tations made in 1930. All the evidence must go either to those representations, or the facts surrounding those representations, and I can not see any possible materiality to this testimony, and I submit that counsel should indicate to the Court the basis of its materiality to any issue in this case.

The Court: I take it you are going to hook this up somehow or other?

Mr. Gamble: Yes; we can not prove the case all in one question.

Mr. Johnston: It is perfectly true, your Honor, and I appreciate that just as well as counsel does. But, I do submit this, that the first question—and it is a question purely of law as well as of fact—is whether or not representations were made, and what those representations were.

If those representations were in writing, then it becomes a question of law for the Court to determine whether they were or were not misrepresentations, that is to say, whether they could possibly be construed as such.

It seems to me we are starting out here without any basis for the introduction of this evidence upon any misrepresentation that is material or is alleged in this case, and he can not possibly connect it with anything.

The Court: I think at this state we will pretty near have to accept his assurance that he will connect it up.

Mr. Johnston: Except, if the Court please, I don't want to take too much time, but I do want to impress this upon the Court, that if counsel is going ahead at this thing backwards to prove those facts with reference to alleged misrepresentations, or failure to disclose, and that is what this evidence, I assume, goes to, before having put in before the Court any of that evidence, it is going to be very difficult for the Court to rule on the matter because we first have to consider what these representations were, and then what evidence is material as bearing upon them. That is the logic of the case.

The Court: Proceed.

Mr. Johnston: May I show my objection to this line of testimony until its materiality or relevancy to any issue is disclosed?

The Court: Yes; your objection is noted.

Mr. Johnston: And without repeating it, your Honor, so I won't interrupt counsel?

The Court: Yes.

The Witness: It is my recollection that I had correspondence with Mr. Lombardi in the summer of 1925

with respect to the form of the bonds to be issued. To my knowledge I had no correspondence with the officers of the City of Longview. I am not sure that I have the District numbers, but the bonds which we bought through Mr. Sleep in 1925, we did not consider them with respect to different Districts. We made three purchases from the Long Bell Lumber Company of these Local Improvement District Bonds. As far as the 1925 purchase is concerned, the circulars would show the amount but not the District numbers, because we did not differentiate. These bonds which we bought in 1925 were Local Improvement District Bonds which we considered secured solely by the unconditional guaranty of the Long-Bell Lumber Co.

Q. Were they, did they purport to be secured in any other way?

A. Under the Washington laws governing the issuance of Local Improvement District Bonds, we knew from records available, generally, that the bonds issued under those laws, were having difficulty, and we would not have considered these at all, we would not consider these as bonds predicated simply upon that security.

The bonds did purport to be secured in another way than by the unconditional guaranty of the Long Bell Lumber Company. The legal opinion which accompanied the bonds, I think, recited something to the effect that they were secured by assessments levied on the land within the respective districts.

I don't recall that in the correspondence I had with Mr. Lombardi the question of the assessments being disclosed in those bonds was ever discussed. The first purchase of these bonds was made in 1925. This circular (Plaintiff's Exhibit B-1) is descriptive of an issue we bought in 1927. This is not the circular which was distributed among our prospective customers for these bonds since I assume that a final circular was prepared in which the word "preliminary" had been removed. I don't recall whether or not there were any changes in the final circular. I know that we submitted the circular to Long Bell. I do not have with me a copy of the final circular.

Referring to Exhibit B-2, the amount of Longview, Washington, Local Improvement District Bonds which we bought in 1925 was $1,483,000. This circular does not show the district numbers. Subsequent to this transaction we knew there were to be some additional Local Improvement Districts formed within the limits of the city of Longview, and we knew they were formed since we bought

the bonds through Mr. Sleep. We bought these bonds from the Long Bell organization. I have here the issuing circular on these subsequent purchases and sales.

Mr. Johnston: If the Court please, this illustrates the point I am making on my objection: As I understand the facts, counsel are relying their alleged misrepresentation on one circular, to-wit, the last circular in 1927, which they say was the only one that was delivered to them, and yet counsel is going into the prior circulars, on which they don't claim to have relied, for misrepresentations.

It just means to me, it seems to me that we are getting this case in entirely backwards, because I appreciate it is difficult for the Court to rule on evidence with no background before the Court as to the case, except the statements of counsel. But it is illustrated in this way: Your Honor, suppose that I was relying in a deceit action upon a given letter and the representations therein contained. Now, there were other letters issued at other times with respect to other issues of bonds, it certainly would not be competent to put these letters in evidence and examine about them; I can only go in, where the representation is in writing, as it is claimed to be in this case to that representation and the facts and circumstances regarding it.

Now, that is the basis of my objection to all of this testimony.

The Court: He must have some reason for this. What is your answer to that, counsel?

Mr. Gamble: Why, the purpose of this examination is to develop the knowledge of this executive officer of Halsey, Stuart & Co. of the facts surrounding the purchase and sale, the formation of these districts and the issuance of these bonds.

In addition to that, the allegation with respect to the statements contained in the particular circular which Mr. Johnston has made reference to in his argument, upon his objection, our complaint contains allegations of a failure on the part of Halsey, Stuart & Co. to divulge to us material facts while they were divulging half truths.

Now, me must, in order to sustain our position, show knowledge on the part of Halsey, Stuart & Co. of these material facts, and that is the purpose of this inquiry.

Mr. Johnston: Now, your Honor,—

Mr. Gamble: Just a minute.

Mr. Johnston: Pardon me, I thought you were through.

Mr. Gamble: It may be the course I am pursuing in

trying to elicit this information is not satisfactory to Mr. Johnston—

Mr. Johnston: That is not the point.

Mr. Gamble: —but, after all, your Honor, we have, I grant you, a complicated fact case, and I will do the best I can to expedite it. But, certainly, I ask you to take my assurance that I feel this is material.

Mr. Johnston: Now, your Honor, that raises the precise question which I suggested to your Honor yesterday in advance of the trial of this case.

This evidence, as I anticipate, is going to the questions of failure to disclose.

Now, those questions are legal questions purely, and this case, being governed by the law of the State of Iowa, there is no burden on us, or was no burden upon Halsey, Stuart & Co., the seller of the securities, to disclose.

Now, if they are talking about this vague statement of half-truths, that is based upon the alleged representations in the letter written by Mr. Wood. That, the construction of that letter, as I will show to your Honor under the well settled authorities is a question of law for the Court, and, therefore, we have at this time no basis for the introduction of any proof of this kind until:

1. The Court has determined that misrepresentation, or evidence as to misrepresentation, can be heard in this case;

2. Until the Court has passed upon that letter and determined, as a legal matter, whether that letter contains any misrepresentations.

Now, those are two legal points which must be passed upon before we can go into the evidence.

The Court: Yes; your objection is sustained now. Go ahead with your examination.

We bought in 1926 $908,699.57 worth of those bonds. This issuing circular (Plaintiff's Exhibit B-3) discloses the number of the district involved, it being all in one district.

Plaintiff's Exhibit B-1 shows that $785,734.60 worth of the bonds were issued in connection with the purchase and sale of the third issue.

I have heard of a municipal subdivision known as the Cowlitz County Consolidated Diking District No. 1.

Q. When did you first hear of that?

Mr. Johnston: If the Court please, I want to renew my line of objection.

We are now going into the question of the Cowlitz County Bonds, which are not involved in any representa-

tion set forth in the pleadings. They are based solely upon the letter which is set up in the declaration, or the substance of it, set up in the declaration, and as the Court will see, reading that letter, there is no basis in the letter itself for any claim that there was a representation that there was not outstanding these Cowlitz County Districts, or anything to that effect.

Now, the construction, as I say, of that letter, is a question of law for the Court before any evidence can be introduced on the Cowlitz County Diking District.

The Court: That is your construction of the letter?

Mr. Johnston: No; it is not mine; it must be the Court's.

The Court: No, you want it to be the Court's. As I understand the letter they said there was no other bonded debt, or funded debt, of the municipality,—

Mr. Johnston: Of Longview.

The Court: Your contention is this Diking District is something like our Drainage District, and was not an obligation of that municipality. Their contention is just the opposite.

Mr. Johnston: No, they don't contend it was an obligation of the municipality.

The Court: They do contend that the property which is involved in this proceeding here, against which these special assessment bonds were issued, was burdened with the Diking obligation.

Mr. Johnston: But they were burdened with School and County Bonds.

The Court: I will overrule your objection.

Mr. Johnston: What I want to have is an opportunity to argue to your Honor that letter and its construction.

The Court: You will have that.

Mr. Johnston: Because it is a question of law for your Honor to pass upon; it is not a fact question.

The Court: All right.

Mr. Gamble: Read the question.

(Question read.)

The Witness: I think it was early in 1925.

We learned of the location of that Diking District at the time we bought the issue of Cowlitz County Consolidated Diking District No. 1 bonds in 1925, which purchase we made from Long Bell, meaning it in the same sense as I have used it before as the entire Long Bell organization.

Mr. Sleep also negotiated that purchase on behalf of Halsey, Stuart & Co. These bonds are described by the

title, a Diking Bond issued for the construction of dikes and having as security the assessments as recited by the opinion and the unconditional guaranty by endorsement of Long-Bell.

The assessments were on land within the district. I am not positive as to the topography, but I assume that it embraced the low land, at least, that constituted the corporate limits of the city of Longview. My recollection is that that issue of bonds which Halsey, Stuart & Co. bought from the Long-Bell interests amounted to $3,225,000 or $3,226,000, which was reduced. These bonds were also secured by assessments upon the lands in the Diking District. In connection with these bonds also we gave no consideration to the amount of the assessments, but considered them solely on the basis of the guaranty.

Prior to 1925 the Long-Bell Lumber Company had issued some first mortgage bonds. I had nothing to do personally with them. It was from circulars, not from my own knowledge, that I was aware of the fact that the Long-Bell Lumber Company had in 1926 issued its collateral gold notes secured by the pledge of first mortgage bonds upon the properties of the Longview, Portland & Northern Railroad, but I had nothing to do with the purchase and sale of those bonds either.

I think that in 1925 Halsey, Stuart & Co. discounted some city warrants of the City of Longview for the Olympic Construction Company in connection with the construction of the improvements involved, but I would not have handled that.

There was a Local Improvement District in Longview which issued bonds, bought by Halsey, Stuart & Co., numbered 19, and I would say that the limits of that District were practically co-extensive with the corporate limits of the City of Longview, but I don't know that they were exactly co-extensive. I also think that the limits of Local Improvement District No. 11 were approximately co-extensive with the corporate limits of the City of Longview.

Q. Did you ascertain those facts at the time that you bought and sold the bonds issued by those respective districts?

A. If you mean bought, not at the time we bought, but if you mean by the time we sold—we were selling these for a period of five or six years and during that period of time we may have ascertained it, but we did not at the time we bought them.

Not as a fact to my recollection did we know this fact

before 1930. We wired the City regarding that and got an answer with respect to District 11. I assume that we ascertained from Long Bell that District 19 limits were practically co-extensive with the limits of the City of Longview, probably in some casual conversation.

We made no specific investigation in 1925 as to the valuations of the lands in the Local Improvement Districts because we handled the bonds, as I have said, solely on the guaranty and we did not regard them as individual financing on these various entities. We regarded them as municipal obligations, but having an unconditional guarantee of a private corporation.

Mr. Gamble: I am showing you the carbon copy of a letter from you to Mr. Lombardi, dated August 7, 1925.

Q. Will you read it and refresh your recollection, and tell us whether or not you were not making an investigation of the valuation of lands embraced in certain districts, Local Improvements Districts, in the city of Longview, Washington, at that time?

Mr. Johnston: This seems to me, seems to be a little different line of inquiry. The same objection, if the Court please, the same reason.

The Court: Yes.

The Witness: I would say it was an inquiry, not an investigation, unless I misunderstand your construction of the word "investigation." We mean by that a personal inspection with the information that we would gather in connection with that.

In that letter I say that, in order to avoid any discrimination, we propose to offer the bonds simply as the obligation of Local Improvement Districts, unconditionally guaranteed both as to principal and interest by the Long-Bell Lumber Company. "Accordingly, we shall not attempt to show any valuations in the respective districts, but as a matter of our own information we shall appreciate it if you advise us what, to your best knowledge, is the actual valuation of real property in the separate district that is available in this form. Otherwise, in the aggregate."

I made that inquiry of Mr. Lombardi, the attorney for the Long-Bell interests at Longview on August 7, 1925. The information was furnished by the City Engineer under date of August 17th to Mr. Lombardi, and Mr. Lombardi sent us a copy of the letter giving the valuations in districts 1, 2, 3, 4, 5, 6, 7 and 8. These valuations are very low due to the fact that when the valuations were determined, nearly two years previously, the property was then

practically farm property; in other words, it was not urban property.

Q. Now, what did you ascertain about the assessed valuations of the properties embraced within those respective districts, Nos. 1 to 8, in August, 1925?

Mr. Johnston: Objected to for all of the reasons stated, not competent, material or relevant to any issue in this case.

The Court: Overruled.

The Witness: I am giving you the exact amounts, District No. 1, $45,220; District No. 2, $94,485; District No. 3, $23,727; District No. 4, $174,515; District No. 5, $24,365; District No. 6, $41,475; District No. 7, $17,165; District No. 8, $1,741.

I think I inquired in 1927 as to the valuations of the lands included within the city, and my recollection is that we received that information from Mr. Alex Hay, Tax Agent in the County of Longview for the Long-Bell properties. I recall that the amount of the assessed valuation in the City of Longview in 1927 was $4,226,000, an estimated valuation.

Having located the letter from Mr. Hay dated May 16, 1927 and refreshing my recollection from that letter, he reported as the assessed valuation on the property in the City of Longview as of that date $3,439,918.

Mr. Johnston: As of what time?

A. May 16—oh, he wrote under date of May 16, 1927.

Mr. Johnston: Assessed valuation for what year, 1926?

A. March 1, 1927, I assume; he just says as of March 1.

Mr. Johnston: That is the assessed valuation for the previous year, I think.

The Witness: We bought and sold these bonds solely on the guarantee of the Long-Bell Lumber Company, paying no attention whatever to the valuation of the lands upon which the assessments were laid. We did not regard in the year 1927 the valuations of these lands as disappointing as supporting the issuance of these bonds.

Refreshing my recollection by reference to a pencil notation of a reply upon the wire signed "Prescott-Minneapolis to Simond", it is a response an an inquiry for information on each particular district, showing kind of improvements, population and valuation figures and said: "We haven't the data but with exception one or two districts showing would probably be disappointing from point of population, area, valuations, etc., and for this reason we rely entirely on Long-Bell guarantee."

I was saying that to Mr. Prescott, having in mind that

his customer said he was interested in the bonds and that he wanted security other than the guarantee. Mr. Prescott was our sales manager in Minneapolis and I was making that statement in response to his inquiry. There was no chance to sell the bonds on the guarantee alone.

Q. And you meant to convey to the Sales Manager at the Minneapolis office that at the time the information he had reported concerning valuation, population, area, and so forth would be disappointing with the exception of one or two districts, is that right?

A. I don't think I qualified it with the exception of one or two districts.

As early as June 1926 we regarded the sole justification of our handling the issues of Longview, Washington Improvement District Bonds as the Long-Bell guarantee. That is why we handled them and that is why we had the feeling that if any one looked at them in any other light the figures would be disappointing. We were making statements at this time in connection with the sale of these bonds, that our sole justification for handling these bonds was the guarantee. That was obviously our general statement, or we would have shown valuations, populations and considered them on that basis, and so given that information in the circular.

When we were first handling these, Mr. Kelley was not in our sales organization. Mr. Vinnidge was at that time one of my assistants. The house, Halsey, Stuart & Co., was making an effort to place these bonds with corporation customers, and I sent telegrams and answered inquiries from these salesmen all the time about these bonds.

We had bought bonds previously to these for sale to prospective customers in the state of Iowa. All kinds of bonds including municipal bonds, but only bonds that we thought had merit. I knew, prior to 1930, of the existence of the Equitable Life Insurance Company of Iowa and that they were a customer of Halsey, Stuart & Co.

Mr. F. A. Wood was a gentleman in the office in charge of a certain sales territory, including the State of Iowa. He is no longer with Halsey, Stuart & Co. We would attempt to supply him, as we would any sales manager or salesman, with any information regarding issues, whether we handled them or not.

I was not aware, except generally, as to the restrictions upon the type of securities which an Iowa Life Insurance Company might buy. That was followed by the sales manager. I was not aware, while he was drafting it, that Mr. Wood in 1926 assisted in drafting a proposed law concern-

ing such restrictions. I learned afterwards he had helped on it.

Not only would we have not considered these Local Improvement Bonds as suitable for us to sell a life insurance company if they had been secured alone by assessments upon the land included in the Local Improvement Districts of the City of Longview, I think I can go much further than that and say we would not have handled them without the guarantee. We would not have bought them without the guarantee.

Mr. Johnston: I will cross-examine, if the Court, please, although I am contending the evidence is inadmissible, but it seems to me that it is proper to cross-examine.

The Court: Yes.

Mr. Johnston: Until the Court has ultimately passed upon the question.

Cross-Examination of Mr. Simond by Mr. Johnston.

I have had experience in the purchase of special assessment or district bonds in my long experience with Halsey, Stuart & Co. In making such a purchase our department would make a personal and complete investigation on the ground, getting valuations, maximum benefits, the minimum benefits, average valuations, maximum valuations, type of property, area. We made it pretty comprehensive. When we sold these bonds, our circular would set forth a resumé of those facts.

The City of Longview in 1925, when we bought these bonds, had been incorporated for approximately a year. We were advised that a city was just started, just developing. Because the city had not yet developed very far in the improvement of its lands, not only did we not feel justified in putting out an issue of bonds based upon those lands in the several districts, but also we did not feel the provisions of the Local Improvement District laws of the State of Washington afforded sufficient safeguards. So we were interested only in the purchase of these bonds because of the unconditional guarantee of the principal and interest of the Long-Bell Lumber Company. We realized, of course, that the land was subject to the tax for the payment of the bonds, both principal and interest and therefore whatever added value that gave, the bonds had the advantage. But we would not have purchased and would not have sold to our customers these bonds on this new city, just in the initial stages of development, without this

unconditional guarantee of Long-Bell. Not only that city, but other cities in Washington.

When I was asked whether we were selling these to corporation customers and if we called the attention of our salesmen to the sale of these bonds to such customers, I meant that just having financed the corporation, and offered and sold first mortgage bonds thereof, we felt they would be a logical outlet, or would have a logical interest in the guaranteed obligations of that same corporation, but having the additional features of a tax-exempt bond by virtue of being a municipal bond. I was just referring to the customers who had already bought first mortgage bonds of the Long-Bell Lumber Company. I don't know if the first mortgage bonds were secured upon the timber holdings in Washington, Oregon and California, but that had nothing to do with the City of Longview.

When I said in my wire to Mr. Prescott that I felt the values in some of these districts would be disappointing, and therefore we were not relying upon them, I had in mind that they should not be presented as an obligation payable solely from those assessments within the various districts. In other words, sales effort should be placed, as we have placed it, upon the guarantee of the Long-Bell Lumber Company.

As I recall as a matter of fact, except for the early statement in the letter of May 16, 1927, from Mr. Hay as to the value of these lands as farm lands, before they had put them on the books as urban property, we received no valuation on the land within the several districts. We did get from time to time from Mr. Hay the assessed valuations of the land in the City as a whole. They were stated to be the values which the Assessor had placed upon the land, and not the actual value. I do not recall whether or not Mr. Hay indicated in some of the letters what the actual value in his opinion was with reference to the assessed value.

I said in answer to counsel's question that the first definite information I had as to whether or not District 11 was practically co-extensive with the City of Longview, was in response to my wire out there to Mr. Alex Hay in 1930, Mr. Hay being the Tax Agent of the Long-Bell Lumber Company at Longview. As a matter of fact, that wire was sent in response to a request from the Equitable to obtain that information. The telegram itself containing that information I submitted to Mr. Wood's assistant, who was Mr. Holden Smith, the Assistant Sales Manager of the

group of which Iowa was a part, and who was working with Mr. Kelley on this and other situations.

My wire out to Longview was approximately October 16, 1930, and also Mr. Hay's reply.

In regard to the three issues of Longview Local Improvement District Bonds, one in 1925, one in 1926 and one in 1927, the initial purchase of $1,483,000.00, was delivered to us either in the summer or early fall of 1925, and was offered generally by our organization and advertised throughout the country in the fall of 1925. The 1926 issue was offered and distributed within the next six months, the early part of 1926, by means of advertising and circulars. The last issue in the spring of 1927 followed the same procedure in that it was given pretty wide publicity and advertising in the financial circulars as well as circularizing.

The first issue of $1,483,000.00 was all sold practically in the following three or four months, prior to the purchase and offering the second block. As a matter of fact, we had none of the original offering after April, 1928.

The Cowlitz Diking District Bonds were widely advertised and circularized and offered throughout the entire sales organization in the early part of 1929. Halsey, Stuart & Company at that time had branch offices and sales offices at various places throughout the country, and those Cowlitz Diking District Bonds were offered generally through all of those offices from coast to coast. They were advertised in financial newspapers in the money centers, New York and Chicago, and also I think in Minneapolis.

Our advertising department records would show exactly that information.

Redirect Examination by Mr. Gamble.

This advertising was not done under my supervision but was prepared by the Advertising Manager. I approved the data which the advertising contained, but I did not place the ads.

The date of the wire from Mr. Hay which I transmitted to Mr. Holden Smith was October 16, and was sent from Longview, Washington, on that day as a night letter. It was received by Halsey, Stuart & Company on October 17th.

HAROLD L. STUART, called as a witness by the plaintiff under the provisions of Rule 43-B, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Gamble.

My name is Harold L. Stuart, and I live at 999 Lake Shore Drive in Chicago.

I am the president and a director of Halsey, Stuart & Company, and have been since its organization in 1916.

Halsey, Stuart & Company is engaged in the general business of buying and selling bonds and other evidences of debt, with its chief office in the City of Chicago, and maintains offices in other cities in the United States, but none outside of the United States.

I was acquainted with the gentleman named R. A. Long, who is now dead.

I was also acquainted with the gentlemen named M. B. Nelson, R. T. Demsey and Jesse Andrews, who were all connected with the Long-Bell Lumber Company.

I think Mr. Long was chairman, Mr. Nelson president, Mr. Demsey treasurer and Mr. Andrews counsel of that company.

Halsey, Stuart & Company underwrote securities for the Long-Bell Lumber Company, and I had something to do with the negotiations which led up to that underwriting.

Q. When did Halsey, Stuart & Co. first undertake to underwrite the securities for the Long-Bell Lumber Company?

Mr. Johnston: If the Court please, I want to register an objection to any securities other than those involved in this case for the reason that the evidence is not material to any representation which is pleaded, and because it is impossible for the Court at this stage to determine its competency until the Court has before it the representations upon which the plaintiff relies; that to go into issues of bonds and securities other than those involved in this litigation is wholly beside the issues as presented by the representations upon which the plaintiff relies.

The Court: Let the objection be noted. Proceed.

The Witness: I don't remember the date.

Mr. Gamble: Q. Did you underwrite any securities for the Long-Bell Lumber Company known as First Mortgage Bonds?

A. Yes, sir.

Mr. Johnston: May my objection show to all these, your Honor, without repeating it?

The Court: Yes. This whole line of inquiry.

The Witness: Yes. It is my recollection that these bonds were issued by the Long-Bell Lumber Company in more than one series. They were entitled First Mortgage Bonds, and I presume they were a first mortgage on most all of the property of the Long-Bell Lumber Company. I knew at the time that we underwrote those issues what properties they covered.

We also underwrote for Long-Bell Lumber Company bonds known as Cowlitz County Consolidated Dike No. 1 Bonds, which to my recollection were a tax lien on Cowlitz District 1 and in addition guaranteed, I think, by the Long-Bell Lumber Company.

I cannot from memory tell you how much money these First Mortgage Bonds of the Long-Bell Lumber Company Series A, B and C represented, but I think it was upward of Twenty Million Dollars.

We also underwrote for the Long-Bell Lumber Company some securities called Collateral Gold Notes secured by a first mortgage upon the properties of the Longview, Portland & Northern Railroad.

I have had my attention called to Plaintiff's Exhibit B-4, which is a copy of the issuing circular issued by Halsey, Stuart & Company in connection with the sale of these collateral gold notes.

Q. Were you not fiscal agent for the Long-Bell Lumber Company at the time you issued that circular?

Mr. Johnston: That is objected to.

The Witness: I don't think we were ever fiscal agents for the Long-Bell Lumber Company. I think that the coupons on their bonds, or some of them, were payable at our office, but we were never fiscal agents, as I understand it, for the Company, just paying the interest on various issues of bonds.

Q. I call your attention on page 2 in the left-hand column near the bottom of the page, a statement beginning with the word "principal", and ask you to read that to refresh your recollection as to whether or not you did not represent Halsey, Stuart & Co. as fiscal agents of the Long-Bell Lumber Company in connection with that circular which was distributed at the time you sold those gold collateral notes.

Mr. Johnston: That is objected to. Here is a representation which is sought to be proved with reference to

an issue of bonds which is not in issue in this case, and it does not appear that the plaintiff ever bought, which is in any respect covered by the pleadings, and I can not conceive of anything that is further removed from the allegations in this case, and I object to it for all of those reasons.

The Court: What is your answer to that, counsel?

Mr. Gamble: Your Honor, we are going to show the closest relationship between Halsey, Stuart & Co. and the Long-Bell Lumber Company, a relationship as intimate, almost as it possibly could have been from a financial standpoint.

Here is a public statement that they were issuing to the public announcing themselves as fiscal agents of the Long-Bell Lumber Company.

The Court: In other words, you are attempting to take the defendants out of the ordinary classification of dealers in stocks and securities?

Mr. Gamble: Yes, sir, in so far as their knowledge of the affairs of the Long-Bell Lumber Company were concerned.

The Court: I will overrule the objection.

A. It says so, yes, sir.

Mr. Johnston: Is that Mr. Long's letter, or Halsey-Stuart's letter?

Mr. Gamble: It is Mr. Long's letter that is attached to the circular which Halsey, Stuart & Co. distributed.

Mr. Johnston: That was Mr. Long's language.

The Court: What he is referring to now is an Exhibit marked Exhibit 4.

Mr. Johnston: It is a letter from Long, as I understand it, and in that he is quoting from something he wrote to Halsey, Stuart & Co., not what Halsey, Stuart said.

Mr. Howland: The letter is part of the circular.

Mr. Johnston: Mr. Long might use the term "fiscal agent" and not have any significance or meaning.

The Court: I thought Mr. Stuart said the letter accompanied the circular.

Mr. Johnston: It is part of the circular.

The Witness: These gold notes were secured by first mortgage bonds of the Longview, Portland & Northern Railway Company.

Q. I call your attention to a statement on page 3 of Exhibit B-4 in the second column near the top of the document, beginning with the top of the middle page, beginning with the word "principal", and ask you to read that and refresh your recollection as to whether or not you did not represent in that circular that Halsey, Stuart & Company,

Incorporated, were the fiscal agents of the Long-Bell Lumber Company in connection with the First Mortgage Bonds of the Longview, Portland & Northern Railway Company?

A. Yes, sir; that is what it says here.

Halsey, Stuart & Company also underwrote for Long-Bell Lumber Company, or some of its subsidiaries, issues of Longview, Washington, Local Improvement District Bonds, which were special assessment bonds secured by taxes against the benefited property and, in addition, the guaranty, I think, of the Long-Bell Lumber Company.

Q. Is it not a fact, also, Mr. Stuart, that after the marketing of these various issues of securities to which you have testified for the Long-Bell Lumber Company that Halsey, Stuart & Company, Incorporated, engaged in marketing operations for the purpose of maintaining the prices on those securities?

Mr. Johnston: That is objected to.

The Court: Objection overruled.

Mr. Johnston: As incompetent, irrelevant and immaterial to any issue in this case.

The Witness: I have no specific recollection, but it was an ordinary, orthodox thing to do in connection with marketing any bond issue.

Mr. Gamble: Q. Do you now recall in the year 1928 making a demand upon the Long-Bell Lumber Company for the payment of $75,000 as compensation for services Halsey, Stuart & Company rendered in bringing about an improvement in the market value of Long-Bell Lumber Company securities?

Mr. Johnston: That is objected to as incompetent, irrelevant and immaterial to any issue presented by the pleadings of this case.

The Court: Overruled.

The Witness: Yes, sir.

Mr. Gamble: Q. And, as a matter of fact, that demand was subsequently compromised and settled, wasn't it?

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: Yes, sir.

Plaintiff's Exhibit B-5 is a copy of a letter which I wrote to Mr. M. B. Nelson, president of the Long-Bell Lumber Company on February 28, 1929.

Q. I will ask you to refer to the letter, in the second paragraph, and tell us now what was the aggregate amount of the securities of this Long-Bell Lumber Company, or its subsidiaries, which you had underwritten for the Long-Bell Lumber Company?

Mr. Johnston: That is objected to. The letter speaks for itself.

Mr. Gamble: Up to that time.

The Court: Do you want to put the whole letter in, or just read a part of it?

Mr. Gamble: I will be glad to put the whole letter in.

The Court: Is that what you want?

Mr. Johnston: No, but I don't think he ought to pick out pieces out of a letter, the context of which may, as the Court knows, materially affect the statements contained in the letter. I have permitted him to go ahead this morning making those statements as to what the letters contain, but I think there should be a limit to that.

The Court: This is cross-examination under the statute. Is he permitted to pick a part of a letter?

Mr. Johnston: He can ask to look at it, but I don't think he can put in part of a letter on cross-examination,—it is examination by way of cross-examination which allows the asking of leading questions.

The Court: Yes.

Mr. Johnston: I don't think it changes the rules of evidence in any respect.

Mr. Gamble: I am asking him to look at this letter, or a copy of it, to refresh his recollection and see if he can tell us how much, in money, these bonds amounted to he handled for Halsey, Stuart & Co.

The Court: Objection overruled.

The Witness: Yes, I have read it.

This Exhibit B-5 says that the total amount sold at wholesale of these various securities of the Long-Bell Lumber Company which Halsey, Stuart & Company had marketed up to February 28, 1929, was $35,866,692.05, while the gross sales wholesale and retail were approximately $55,000,000.00.

Q. Now, isn't it a fact, Mr. Stuart, that because of your underwriting of these securities that you felt it would be wrong for Long-Bell Lumber Company to let anybody else undertake to maintain the market on those securities?

Mr. Johnston: That is objected to as not competent, relevant or material to any issue in this case, and for all of the objections I have heretofore stated as to this entire line of testimony.

The Court: The same ruling.

The Witness: I think, as a matter of fact, in most, in some of these issues, we have had associates that underwrote the bonds with us.

The maintenance of the market was the ordinary thing

in the bond business. As far as permitting other people to maintain the market in Long-Bell securities, that question never came up; it was part of our job.

I have read the last two sentences of Plaintiff's Exhibit B-5.

Q. Did you not say to the President of the Long-Bell Lumber Company that you felt that you, meaning Halsey, Stuart & Co., should be the one that should be permitted to maintain the market on the Long-Bell securities, in effect?

A. No, sir. This question here—

Q. Just a moment; you have answered. Did you not, also, say to the President of the Long-Bell Lumber Company that in the last analysis we, meaning Halsey, Stuart & Co., Incorporated, are your market?

A. I did.

I think we tried all the time from 1925 through the year 1930 to follow closely the financial situation and condition of the Long-Bell Lumber Company.

Q. And, as a matter of fact, did you not keep posted quite well on Long-Bell financial matters?

Mr. Johnston: This seems to be a new line of inquiry, so I renew my objection, on the ground there is no claimed representation with respect to the financial condition of the Long-Bell Lumber Company in the entire complaint, and this evidence is, therefore, incompetent, irrelevant and immaterial to any issue presented.

The Court: Objection overruled.

The Witness: We tried to.

I suppose we did also try to keep informed with respect of the general condition of the fir lumber industry in this country, particularly with respect to the Long-Bell condition as affected by any depression in the fir industry.

Q. There was a depression in the fir industry in this country between 1925 and the end of 1930, was there not?

Mr. Johnston: That is objected to. That is going into a new line of inquiry having no relevancy to any issue made by the complaint as to any misrepresentation alleged, and is incompetent and irrelevant to any issue in the case.

The Court: I thought you discussed that with the jury in opening statement. Objection overruled.

Mr. Gamble: That is true.

Mr. Johnston: I said after 1930, your Honor, that this was, that the trouble in this case was due to the depression occurring in 1930, starting in 1931, when the market went down, to 1932, the market, lumber market generally, not in the fir industry only, to the lowest point it had been

to since 1865 as pointing out what happened to the Long-Bell Company in 1932 and 1933.

I said nothing whatever about the condition prior to that time because it is not material to any issue.

The Court: Put the question.

Mr. Gamble: I beg your pardon?

The Court: Answer the question.

The Witness: I don't remember.

I may have known at the time that the Long-Bell Lumber Company, or its subsidiaries, at all times between the year 1925 and the end of the year 1930 owned at least seventy per cent in area of the lands included within the City of Longview, Washington.

It is my recollection that I knew that the Long-Bell Lumber Company through its subsidiaries was trying to sell lots and land in the City of Longview, Washington.

Q. Isn't it a fact that reports, at least up to and through May, 1928, of the quantity of yearly sales, and a few month by month, of such lands and lots effected by the subsidiary of the Long-Bell Lumber Company was sent to you, and are now in your files?

Mr. Johnston: That is objected to as being a new line of inquiry, going to no matter presented by the pleadings in this case, and as to no representation alleged or claimed by the plaintiff.

The Court: Objection overruled.

The Witness: I don't recall.

Q. Isn't it a fact, Mr. Stuart, that as early as January, 1930, you knew of efforts to effect mergers of operators of lumber manufacturing plants in the Pacific Northwest?

Mr. Johnston: That is objected to as being another entirely different issue, not relating to any matter pleaded in this case, or to any of the alleged misrepresentations.

Mr. Gamble: I will connect it, I will connect the Long-Bell with it, in just a second.

The Court: Objection overruled.

The Witness: I knew of such efforts, but I don't remember the dates.

Mr. Gamble: Q. Well, you had conversations with Mr. R. A. Long, Chairman of the Long-Bell Lumber Company, with respect to that, didn't you?

Mr. Johnston: That is objected to, calling for conversation with Mr. R. A. Long.

The Court: Objection overruled.

Mr. Johnston: Who is now dead, as to a matter not competent, material or relevant to any issue in this case.

Mr. Gamble: I will add Mr. M. B. Nelson, too, who is not dead.

The Witness: Yes, sir.

Having looked at the correspondence passing between myself and Mr. R. A. Long dated January 27, January 28, January 30 and February 1, 1930, I can now tell you that I learned of the effort to effect a merger of Long-Bell Lumber Company with other lumber operators in the Pacific Northwest in January and February, 1930.

The carbon copy of a plan, marked Plaintiff's Exhibit B-6, was, I suppose, given to us by someone connected with Long-Bell.

Q. Now, isn't it a fact, Mr. Stuart, that you learned in January and February, 1930, that the responsible executive officers of the Long-Bell Lumber Company felt that some action like a merger of the lumber concerns in the Pacific Northwest must be consummated in order to avoid great economic loss and practical disaster?

A. I haven't that recollection, no, sir.

Mr. Shrader is Vice President of Halsey, Stuart & Company, and was on April 3, 1930.

Q. What is the fact, Mr. Stuart, as to whether or not, on April 3, 1930, Mr. R. A. Long and Mr. M. B. Nelson, for the Long-Bell Lumber Company, were endeavoring to procure your Company to underwrite a bond issue on the Longview Daily News in the amount of $150,000?

Mr. Johnston: That is objected to as being a subject matter not in any way relevant, material, or competent to any issue presented in this case; or to any of the alleged claims of misrepresentation.

The Court: Overruled. He may answer.

A. According to Mr. Shrader's memorandum, yes, sir.

Q. Were they not also endeavoring at the same time to get your Company to underwrite an issue of notes secured by the pledge of Timber Participation Certificates on two tracts of standing timber in the Pacific Northwest?

Mr. Johnston: The same objection.

The Court: Same ruling.

The Witness: Yes, sir, according to this memorandum.

Mr. Gamble: Isn't it a fact that their efforts in that respect were for the purpose of providing working capital for the Long-Bell Lumber Company?

Mr. Johnston: Objected to for the same reason.

The Court: The same ruling.

The Witness: It does not say so here.

Mr. Gamble: Q. Don't you know that as a fact?

A. No, I don't.

Q. Item 9, on your subpoena, Mr. Stuart, is a letter, copy of a letter, addressed to Mr. A. Long, by you, under date of April 14, 1930?

A. Yes, sir, I have it.

Mr. Gamble: May I see it just a moment?

A. Yes, sir.

Q. I will ask you, Mr. Stuart, referring to that letter, if it was not written in response to the request of Messrs. Long and Nelson that you considered the underwriting of notes secured by the pledge of the timber for participation certificates which I have referred to?

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: This is in reply to some letter.

Mr. Gamble: Q. Well, were you negotiating with them about borrowings on other timber contracts?

Mr. Johnston: Same objection.

The Court: Same ruling.

The Witness: I don't recall. This refers to a letter dated April 10th. I do not see it here.

The letter of April 14, 1930, said that Long-Bell credit was selling in the market on such a basis as to make it difficult, if not too costly, to undertake the sale of notes secured by the pledge of participation certificates. I have no doubt that was my opinion and view at the time I wrote the letter. By Long-Bell credit, I probably meant the price at which its bonds were selling.

Q. Do you recall now at what price the First Mortgage bonds were selling at that time?

A. No, sir, I do not.

Mr. Johnston: That is objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

We did not underwrite the notes secured by the pledge of the timber participation certificates, nor did we underwrite the bond issue for $150,000.00 on the Longview Daily News.

Q. I will ask you if it is not a fact that on May 5th, 1930, you suggested to the Long-Bell Company that they approach Goldman, Sachs and Lehman Bros. Corporation with reference to such desired financing, stating that they might be organized to make loans where the securities were not immediately marketable, but that they would probably demand a large commission or bonus?

Mr. Johnston: That is objected to.

The Witness: I don't remember that. There may be such a letter.

The Court: He has answered.

Mr. Gamble: I will ask you to look at Item 11, being a letter to R. A. Long, written by you under date of May 5th, 1930.

A. Yes, sir, I have it.

Mr. Gamble: I will now ask the reporter to repeat the question.

(Question read.)

Mr. Johnston: That is objected to, as not competent, relevant or material to any issue in this case, and not going to any of the alleged claims of misrepresentation.

The Court: Objection overruled.

The Witness: I did.

Mr. Gamble: Q. I will ask you, further, Mr. Stuart, if you did not at that time, in that letter, say to Mr. Long, in substance: I have not been able to see any daylight yet on just how the object can be accomplished so far as getting a security which would be salable to the public is concerned?

Mr. Johnston: I object to it for the same reasons.

The Witness: Yes.

Mr. Johnston: Taking a part out of the letter, which is further objectionable, of course.

The Court: Overruled.

I have a copy of the letter from R. A. Long to me dated May 15, 1930.

Mr. Gamble: Q. Did you learn whether or not the Long-Bell Lumber Company approached Goldman Sachs & Company with respect to procuring the desired financing in accordance with your suggestion?

Mr. Johnston: Object to that as being immaterial, incompetent, and irrelevant to any issue in the case, or to any of the alleged claims or misrepresentations.

The Court: Overruled.

A. I may have.

Mr. Gamble: I will ask you to turn to the fourth paragraph of the letter of May 15th, 1930, from R. A. Long to you. After having so done tell me whether you learned whether the Long-Bell Lumber Company did approach Goldman Sachs & Company in accordance with your suggestion?

A. Yes.

Mr. Johnston: The same objection.

The Witness: Mr. Long's letter says so.

The Court: The same ruling.

Mr. Gamble: Q. Were they able to procure that financing?

Mr. Johnston: The same objection.

A. They were not.

I think I received the letter marked Plaintiff's Exhibit B-7, being the letter dated May 15, 1930, from Mr. Long to me, about that time.

Q. And did you not at that time know that responsible executives of the Long-Bell Lumber Company felt a need to strengthen their current position?

* * * * * * *

Mr. Johnston: I object, if the Court please, on the ground that it is incompetent, irrelevant and immaterial to any issue in this case. * * * Going to none of the alleged misrepresentations set forth in their complaint.

The Court: The same ruling. Go ahead and answer the question.

Yes. It says so here.

Mr. Gamble: Q. And did you not know at that time that the responsible executives of the Long-Bell Lumber Company felt that need especially since they found the commercial banks in a generally critical and sensitive attitude of mind?

Mr. Johnston: The same objection.

The Court: The same ruling.

A. It says so here in the letter which I received.

I think I went to Europe in the summer of 1930, and in my absence Mr. Shrader was placed in charge of our relationships with the Long-Bell Lumber Company.

Before I departed for Europe I may have had a conversation in Chicago with Mr. Long and Mr. Demsey.

Q. I mean in which you were told that the banks from which the Long-Bell Lumber Company were borrowing, at that time, a sum of five million dollars and more, were refusing to renew the loans on the old basis of borrowing from the Long-Bell Lumber Company?

Mr. Johnston: That is objected to as being incompetent, irrelevant and immaterial. If a conversation is to be given, the time and place and who was present, should be fixed.

The Court: I thought he fixed the time and place.

Mr. Gamble: I said in Chicago; at your office, I will add that.

Mr. Johnston: When?

The Court: Objection overruled. Before he went to Europe, isn't that what he said?

Mr. Gamble: He said so, in 1930.

The Court: I thought that is what he said. Objection overruled.

Mr. Johnston: That does not fix the period?

The Witness: I might have. I do not recall it.

I am sure I did not make more than one trip to Europe in 1930. I left in May in 1930.

Mr. Gamble: Q. Didn't you learn, Mr. Stuart, before you left for Europe in May, 1930, that the Chase National Bank of New York, one of the commercial bank creditors of the Long-Bell Lumber Company had expressed dissatisfaction with the Long-Bell Lumber Company's lines?

Mr. Johnston: The same objection.

The Court: The same ruling.

A. I have no recollection of it.

* * * * * * *

Mr. Gamble: Q. Did you learn at any time that there was a corporation organized by the name of Long-Bell Lumber Sales Corporation, Mr. Stuart?

Mr. Johnston: The same objection, not going to any issue set forth in the pleadings, or to any alleged misrepresentations.

The Court: The same ruling.

A. Yes, sir. But I do not remember when I first learned of this.

Q. Did you learn that that corporation was organized as a result of the demands of the commercial bankers having loans from the Long-Bell Lumber Company?

Mr. Johnston: The same objection.

The Court: The same ruling.

A. I have no recollection.

Mr. Gamble: Q. Isn't it a fact that the responsible executives of the Long-Bell Lumber Company were counseling with you and your executives with respect to their financial condition, beginning in April and May, 1930, until the Long-Bell Lumber Sales Corporation was organized, and all or most of the liquid assets of the Long-Bell Lumber Company transferred to it?

A. I don't think so. My recollection is that at some time they told us either that the sales company was to be or had been formed. But I don't recall their telling us of any bank demands that it be formed.

Cross-Examination of Mr. Stuart by Mr. Johnston.

My understanding of the term "fiscal agents," as used in the circular shown by Mr. Gamble relating to the collateral note issue which was guaranteed by bonds of the

ngview, Portland and Northern Railroad, was simply at the coupons of that three and a half to four million llar issue were payable at our office. All that Halsey, uart & Company did was to collect, with respect to that ie note issue secured by the bonds of the Longview, rtland and Northern Railroad, the interest coupons and ay them to the holders of the bonds.

With respect to the twenty million or more of first mortage bonds of the Long-Bell Company secured by their st real estate holdings, Halsey, Stuart & Company were t the paying agents, but the paying agent was, first the entral Republic Trust Company and then its successors. o Halsey, Stuart & Company were not even using "fisl agents" in that sense, fiscal agents of the Long-Bell umber Company with respect to that issue.

With respect to the two municipal issues, the Cowlitz ounty Diking District Bonds and the Longview Imrovement District Bonds, guaranteed by the Long-Bell ompany, those interest coupons were paid and the call nds were paid at the fiscal agency of the State of Washgton in New York City, being the National City Bank. o, as a matter of fact, the one issue of which counsel owed me a circular was the only issue of the Long-Bell umber Company for which Halsey-Stuart & Company ted in that capacity.

It was and still is our policy, with respect to all companies which had issued bonds, to keep in touch with perations and financial conditions to the best of our bility. It was done as part of our duty to keep in touch s much as we could with the issue and the company isuing these securities. In keeping in touch with the Longell Lumber Company we probably got its financial statements and tried to keep in touch with the responsible fficers, but as a matter of fact we saw these officers of e company rather infrequently.

So far as the financial condition of the Long-Bell Lumer Company, its assets, liabilities, current ratios, etc., re concerned, we depended upon the financial statements that company the same as we depended upon the financial statements of any other company the issues of which e had sold; that is the only way we can do it. We had ch year their audited statements and also the quarterly atements issued by the company, which latter were unudited, but were the company's statements. That is what meant by saying we "kept in touch with the financial ndition of the company." We did not go out to the ong-Bell Lumber Company during this period of time

and go through their books and records, or anything of that kind. In our opinion we thought the company was the best managed company of its kind.

In discussing the question asked by counsel regarding what counsel for plaintiff was pleased to call a demand for compensation for maintaining the market, in the case of Long-Bell, as well as in the case of all other securities in which the issue had been sold and distributed by Halsey, Stuart & Company, we bought and sold such issues at prices which we thought they were reasonably worth. That is what was referred to as "maintaining the market." It means maintaining an open trading place where securities can be offered and bought and sold. There was no attempt to maintain for these or any other securities an artificial price. We paid what we felt the market value was at the time. This was true of Long-Bell and all of their securities.

The $75,000.00 which in 1928 we requested Long-Bell Lumber Company to pay us was not in the nature of profit or compensation to us, but was merely reimbursement of what we figured our expenses to be. In other words, we figured up and gave to the Long-Bell Lumber Company an itemized statement, attached to the letter referred to by counsel for plaintiff, showing the sales of various issues, and then itemizing and showing the cost of doing business to Halsey, Stuart & Company which showed that it would take a little less than $75,000.00 to put us square on our expenses. So what we were asking Long-Bell Lumber Company to do was no different than what we asked other companies in the same situation to do in meeting our expense of such operations in buying and selling.

In compromising this claim for the amount of excess cost in handling the bonds, we were offered by the Long-Bell Lumber Company 750 shares of their common stock and they were to agree that the market value within a space of time should be not less than $50 per share, which would be some $37,500.00. So that the claim for reimbursement was compromised for that sum and we were willing to take their common stock in settlement.

Referring to Plaintiff's Exhibit B-5 and the figures therein contained, we stated in that letter in the second paragraph:

"We have handled, as you see, a total of $35,866,692.05 bonds at wholesale, and our retail sales have been eighteen thousand, nine hundred fifty, four hundred thirty-seven eighty-five, making a total of approximately 55,000,000."

That does not mean, of course, that there were $55,-

000,000.00 in various bond issues of the Long-Bell Lumber Company issued and outstanding. That relates to a total amount, taking into consideration first the original distribution, being some twenty odd million or more of the first mortgage bonds secured by the timber property, then the three or four million of collateral gold notes, and the municipal issues guaranteed by the Long-Bell Lumber Company, as well as the buying and selling of those which took place thereafter in the regular course of business.

In other words, we maintained a trading department as part of the business of Halsey, Stuart & Company, and in that trading department we buy from customers or others, whoever may have to sell bonds, and sell those bonds through our salesmen among our other customers. Those may be bonds which we have originally issued or may be bonds which we have bought on the market in which we have confidence, although our house may have had no part in the original participation. So the total figure of $55,000,000.00 relates to the total trading operations up to that time in 1928, and it was the total additional expense or loss of $75,000.00 resulting from those operations for which we were asking the Long-Bell to reimburse us.

Subsequent to 1928 we never requested nor received from the Long-Bell Lumber Company any reimbursement for any expenses in connection with any trading operations.

In reference to the merger of fir manufacturers on the West Coast, it is my recollection that it was a fact that the merger was something that had been discussed by the West Coast fir manufacturers for a number of years prior to 1930.

I don't think Mr. Long ever asked my advice as to whether it was advisable for his company to go into that merger of all the large fir manufacturers on the Pacific Coast, but I think he used to tell me what was going on.

That discussion in 1930 with reference to a plan to merge the manufacturers of fir timber on the Pacific Coast had nothing to do, so far as I know, with the then current position of the Long-Bell Lumber Company. There was a general effort to improve the condition of the whole fir industry and, as a matter of fact, had nothing to do with the particular financial condition or business of any individual company.

It is my understanding, to the best of my recollection, that this was a plan to accomplish by merger what could not be lawfully accomplished by agreements or understandings between manufacturers of a common product.

I was asked whether or not in the spring of 1930 I did

not know that the Long-Bell Lumber Company was trying to improve its current position. I understand by "the current position" of a large company like the Long-Bell Lumber Company to mean the relationship of its current assets to its current liabilities.

I don't think that to my knowledge at any time during 1930 was the Long-Bell Lumber Company in any distressed financial condition. I don't recall that Mr. Long and Mr. Demsey and I had any discussions on the subject of improving the current position of the Long-Bell Lumber Company. It was my belief that the steps to which my attention has been called by counsel for the plaintiff were nothing more than the efforts of a well-managed company in view of the conditions in 1930 and the then period of time to put itself in a more liquid position. I thought that the Long-Bell Lumber Company was doing only what any well-managed company would do.

Halsey, Stuart & Company did not cease buying the bonds of the Long-Bell Lumber Company, or any of its issues, during the year 1930, or well into 1931. In every instance in dealing with these bonds, we used our own money and bought them for our own account.

In regard to the correspondence with Mr. Long regarding an issue of notes based upon the Kesterson and Lamb cutting contracts, I knew in a general way that these were contracts made by the Long-Bell Lumber Company with other lumber manufacturers to permit them to cut timber, paying for it a certain amount per thousand feet. I did not regard that sort of an issue secured by those contracts at all comparable to a first mortgage bond issue of the Long-Bell Lumber Company or to a municipal issue guaranteed by the Long-Bell Lumber Company.

As a matter of fact, that sort of an issue was one which Halsey, Stuart & Company wouldn't have handled whether it was 1925, '26, '27 or any other time. That also applies to the issue which was suggested upon the daily newspaper out in the City of Longview. That was not the type of issue which Halsey, Stuart & Company would have ever bought or sold, and was not at all comparable to a first mortgage bond secured by the timber holdings and vast mills of the Long-Bell Lumber Company.

When I made a reference to this proposed issue and said something about the Long-Bell Lumber Company's credit being on too low a basis at that time to justify the sale of that type of securities by anyone except at a very high price, I think I must have meant by "too low a credit basis"

the prices at which the Long-Bell first mortgage bonds were selling in the market.

As a matter of fact, taking industrial bonds generally, and lumber and timber bonds, the general bond market in 1930 was bad as compared to the condition prior to the break in the market in October of 1929. That affected everything; all kinds of bonds, but I think its effect would be less on municipal issues than upon general industrial bonds.

The Chase National Bank never to my knowledge refused to extend its loans to the Long-Bell Lumber Company.

In connection with the formation of the Sales Company, I think all that ever happened was that the Long-Bell officials told us they were going to do it or had done it.

I don't recall the date when they did organize the Sales Company. If you tell me that that became effective as of November 1, 1930, and the transfers were actually made in December of 1930, I have no recollection of having had any conversation prior to or on about that date with any representative of the Long-Bell Lumber Company in which I was told that that Sales Company organization was going to be effected.

I did not regard the need of the Long-Bell Lumber Company in 1930 to strengthen its current position as something which reflected upon the integrity or solvency of the Long-Bell Lumber Company. If I had had any doubt about that question, we would have immediately stopped buying their bonds long before the middle of 1931.

I don't have any recollection of ever having seen reports from Longview, Washington, to Mr. Long regarding the sales that were being made of lots, industrial sites and business properties in Longview. That was a long time ago; I may have seen them.

I have no recollection of having anything to do with either the purchase or the sale of the Longview Improvement District Bonds or the Cowlitz County Diking District Bonds. I probably wouldn't have handled the purchase of those bonds or their sale.

On the second sheet of the itemized matter to which I referred before showing the cost and net loss of $75,000.00 to Halsey, Stuart & Company, which was the basis of our request that the Long-Bell Lumber Company reimburse us for that loss, there appears the figures "Cost per M., $24.60". That means that $24.60 would be our over-all cost of doing business per $1000 of bonds, which is ascertained from our books.

Redirect Examination of Mr. Stuart by Mr. Gamble.

I stated to Mr. Johnston that the total of $55,000,000.00 of Long-Bell Lumber Company Bonds referred to in my letter of February 28, 1929, identified as Plaintiff's Exhibit B-5, included bonds which we acquired by trading operations and also bonds which we bought from Long-Bell Lumber Company originally.

I wouldn't be able to say positively that we always bought these bonds for our own account. I don't know about any arrangement with the Long-Bell Lumber Company to purchase bonds for the purpose of sinking fund requirements under the First Mortgage Bond Indenture. If we bought them on an order from Long-Bell for sinking fund, however, I would have to except the bonds to that extent.

My general recollection is that except for one bond issue sold to the Anglo Bank out in California, the Long-Bell Lumber Company, or its subsidiaries, did not put out any issues of bonds or other evidences of indebtedness from 1922 through 1930 except through Halsey, Stuart & Company. They sold stock, of course, but the stock was all sold through someone else; we had nothing to do with that.

I don't remember how much the issue sold to the Anglo Bank was. All we knew about the formation of the Long-Bell Lumber Sales Corporation and the transfer to it of the liquid assets of the Long-Bell Lumber Company was what they told us.

Q. Well, I am asking you, if, as a financier, you regarded the fact that The Long Bell Lumber Company was transferring practically all of its liquid assets to another corporation, and agreeing that the other corporation should pledge those assets for bank loans, taking common stock in place, was putting The Long Bell Lumber Company in a more liquid condition?

A. No.

Q. You do not so regard it?

A. No.

Q. And if you were told that that was what was demanded, you would not so have regarded it in the spring of 1930?

A. No.

I said that in my judgment the market break in 1929 affected the prices of bonds generally, but less on municipals than on other types. I would say the same thing about a municipal bond, which I wouldn't feel justified in

buying except for and solely upon the guaranty of a lumber industrial corporation.

My reply to Mr. Johnston was that I had no recollection of any talks with Mr. Long, or Mr. Demsey, or Mr. Nelson, about the organization of the Long-Bell Lumber Sales Corporation prior to December, 1930. I am positive we didn't give advice to them. I have no recollection that I told them I thought they had better do what the banks asked them to do in that connection, but I may have.

I can only say that I have no recollection of when I had the conversations with Messrs. Long, Demsey and Nelson with respect to the formation of the Long-Bell Lumber Sales Corporation. I wouldn't say positively that I didn't have them before December, 1930; that is nine years ago.

Plaintiff's Exhibits B-8, B-9, B-10 and B-11 are the correspondence I had with the Long-Bell Lumber Company executives in the early part of 1930 with respect to the merger.

We compromised our claim for $75,000.00 for services rendered because that is precisely what we would do with any client where we put in a bill for services rendered and they thought it was excessive. We would probably end in taking what they wanted to pay us. When we spend our money for one of our clients and ask him to reimburse us, if he is not pleased we take what we can get; we want him to come back again.

There is no difference between the way we handle a bill for expenses and a bill for services.

Recross Examination of Mr. Stuart by Mr. Johnston.

As I recollect it, all of the stock of the Sales Company was owned by the Lumber Company. It was a wholly owned subsidiary, and the Sales Company then took over the bank loans and certain of the unpledged assets of the Lumber Company. That was all there was to that arrangement.

Redirect Examination of Mr. Stuart by Mr. Gamble.

It is my recollection that by that transaction the liquid assets of the Long-Bell Lumber Company were taken away from it and subjected to the payment of the debts of the Long-Bell Lumber Sales Corporation.

I went to Europe in May, 1930, leaving Mr. Shrader, our Vice President, in charge of the matters which were pending between us and the Long-Bell Lumber Company.

The letter of May 17, 1930, from Mr. R. A. Long to me related to such matters and to my reference of my representations to Mr. Shrader.

Q. I will ask you whether or not on May 17th, 1930, the Chairman of the Board of the Long-Bell Lumber Company did not request that, in turning over the matters about which you have testified to Mr. Shrader, you request him to give the subject more than ordinary attention because of this extraordinary importance to us (meaning the Long-Bell Lumber Company)?

Mr. Johnston: That is objected to for the reasons previously stated, incompetent, irrelevant and immaterial to any issue presented in this case or going to any claimed misrepresentation.

The Court: The objection is overruled.

A. The letter so states, yes, sir.

Mr. Gamble: Q. And I will ask you further if the chairman of the Board of the Long-Bell Lumber Company, on May 17th, 1930, did not request that you, before departing, suggest several lines of thought from the study of which a solution for the problem the Long-Bell Lumber Company had before it might be found?

Mr. Johnston: The same objection.

The Court: The same ruling.

A. Yes, sir.

I wrote the letter of June 30, 1930, to R. A. Long, which is Plaintiff's Exhibit B-12. I must have returned from Europe by the last day of June, 1930.

Q. Now, I will ask you to refresh your recollection from Plaintiff's Exhibit B-12, and tell me whether or not you did not, as early as June 30, 1930, know of the negotiations between the Long-Bell Lumber Company and the Chase National Bank?

Mr. Johnston: That is objected to, for all of the reasons previously stated, not being material to any issue in this case.

The Court: Overruled.

A. Yes.

Mr. Gamble: I now offer in evidence Plaintiff's Exhibit B-12.

Mr. Johnston: That is objected to on the ground that it is not material, relevant, or competent to any issue properly in this case. It does not tend to establish or go to the

establishment of any of the misrepresentations alleged and relied upon by the plaintiff in this case.

The Court: The letter may be admitted.

(PLAINTIFF'S EXHIBIT B-12 offered and admitted over objection of counsel for defendant.)

The Witness: Mr. Lonsdale, referred to in Plaintiff's Exhibit B-12, was at that time and perhaps still is, Chief Officer of the Mercantile Commerce Bank in St. Louis.

Q. Now, I will ask you in connection with your statement—I will ask you in connection with the statement in Plaintiff's Exhibit B-12 "all this was volunteered comment but it was entirely interesting to me, in view of Mr. Lonsdale's attitude". What did you mean by "Mr. Lonsdale's attitude"?

Mr. Johnston: I object.

A. I don't remember.

The Court: Yes.

The Witness: A. I read that letter this morning for the first time. I have no recollection of Mr. Lonsdale's attitude. I never met him. It must have been something somebody told me. It might have been the executives of Long-Bell.

My impression is that Mr. Lonsdale's bank was one of the bank creditors of the Long-Bell Lumber Company. I am very hazy on the attitude of Mr. Lonsdale to which I refer in that letter; I don't remember.

We knew nothing about the Long-Bell's banks. When I said in Plaintiff's Exhibit B-12 that I considered that the Long-Bell's banks, except Mr. Lonsdale's, had behaved themselves very well, it must have been information that was passed along to me by somebody else. I don't know what the occasion was for their behaving very well; we had no part in dealing with any bank.

The Mr. Andrews referred to in Plaintiff's Exhibit B-12 was general counsel for the Long-Bell Lumber Company. He may have been a director, I don't know. I saw him occasionally before I wrote the letter, and I think it must have been a verbal message which I gave Mr. Andrews which is referred to in that letter. I must have asked him to tell Mr. Long to let me know the outcome of their talk with the Chase Bank. I evidently knew from that they had been talking with the Chase Bank before June 30, 1930. I may have known the subject matter of those talks.

I have no recollection now of knowing that the Long-Bell Lumber Company was having difficulty in procuring a renewal of its commercial bank loans.

Mr. Johnston: If the Court please, I don't know whether I stated it, your Honor, but I understood these objections go to this whole line.

The Court: Yes.

Mr. Johnston: That I do not need to repeat it.

The Witness: Plaintiff's Exhibit B-13, being a letter from Mr. Long to me under date of July 1, 1930, is in response to the letter about which we have been talking, Plaintiff's Exhibit B-12.

Mr. Gamble: We offer in evidence Plaintiff's Exhibit B-13.

Mr. Johnston: That is objected to on all of the grounds stated in the objections to Plaintiff's Exhibit B-12.

The Court: It may be admitted.

(PLAINTIFF'S EXHIBIT B-13 offered and admitted over objection of counsel for defendant.)

Plaintiff's Exhibit B-14 is a letter written by me to Mr. R. A. Long on June 27, 1930.

Mr. Gamble: We offer in evidence Plaintiff's Exhibit B-14.

Mr. Johnston: To which I make the same objections heretofore made, to all of this line of exhibits.

The Court: Overruled. It may be admitted.

(PLAINTIFF'S EXHIBIT B-14 offered and admitted over objection of counsel for defendant.)

From the statements in Plaintiff's Exhibit B-14, I did not know the Long-Bell Lumber Company was in need of cash for operating purposes at that time.

Plaintiff's Exhibit B-15 is a letter from R. A. Long, Chairman of the Long-Bell Lumber Company addressed to me under date of July 3, 1930.

Mr. Gamble: We offer in evidence Plaintiff's Exhibit B-15.

Mr. Johnston: Objected to for the same reasons, not competent, relevant or material to the issues in this case.

The Court: Objection overruled. The document may be admitted.

(PLAINTIFF'S EXHIBIT B-15 offered and admitted over the objection of counsel for defendant.)

I would say that Halsey, Stuart & Company in the due course of mail received a letter from R. B. Demsey dated December 11, 1925, which is Plaintiff's Exhibit B-16.

Mr. Gamble: We offer in evidence Plaintiff's Exhibit B-16.

Mr. Johnston: Now, that is objected to upon all of the grounds previously stated, and on the additional ground

that it relates to the Long-Bell Lumber Company's first mortgage bonds, and to the statement with respect to those first mortgage bonds which was being prepared, apparently by Mr. Matthessen, of Halsey, Stuart & Company, in connection with the sale of that first mortgage issue, which is a subject matter wholly foreign to any of the matters in controversy in this case.

Mr. Gamble: I think I am justified, your Honor, in making this statement. The letter also includes the statement, which is material, as we contend: "The Long-Bell Lumber Company and its subsidiaries own practically all of the land in the Consolidated Diking District number 1, Cowlitz County, Washington. Such companies therefore pay practically all of the taxes pending the sale of such land as is to be marketed. It was therefore decidedly beneficial to the Long-Bell Lumber Company for the Diking bonds to command the best possible price, and it was found such price was very much higher, with the Long-Bell Lumber Company guaranteeing principal and interest. The par value of the Diking bonds guaranteed, outstanding as of September 30, 1925, was $3,260,000. The same conditions within the corporate limits of the town of Longview apply also for the Local Improvement District Bonds guaranteed as to principal and interest by the Long-Bell Lumber Company. Also such bonds—"

Mr. Johnston: It all has to deal with the question of showing these liabilities as a contingent liability on the balance sheet, for the purpose of the sale of the general mortgage bonds. They would be shown, as you Honor would appreciate, as a contingent liability.

The Court: I think I will admit it in evidence.

(PLAINTIFF'S EXHIBIT B-16 admitted in evidence over objection of counsel for defendant.)

Cross-Examination of Mr. Stuart by Mr. Johnston.

In reference to the letter of May 17, 1930, I said I left Mr. Shrader in charge of the matters pertaining to the Long-Bell Lumber Company. I doubt if there were any pending matters, so far as I recall, between Long-Bell and Halsey, Stuart & Company in May of 1930. I think that was just to give the company some contact with us.

As for the Lamb and Kesterson installment contract financing, we were not interested and would not under any circumstances have been interested at any time in that type of financing, and that is the type of financing Mr. Long is referring to apparently in this letter.

In the letter of June 30, 1930, Plaintiff's Exhibit B-12, reference is made to conferences with Mr. Calvin Fentress of Baker, Fentress & Company. That matter, as I recall, was his desire to talk to me about some sort of a consolidation of the general lumber business. So far as I can now recall, that had nothing to do with the Long-Bell Lumber Company's financial condition, but was rather something looking to the future.

In my letter I stated that I congratulated Mr. Long on the sale of the power property, saying that "it seemed to be a remarkable commentary of the underlying strength of your business that you could liquidate property at such advantageous returns". I regarded the sale of this power plant as a very advantageous sale on behalf of the Long-Bell Lumber Company, and my recollection is that it realized more than the actual cost of the power plant to Long-Bell. The power plant was providing power not only for operating the Longview Mills but for the entire electric system of the City of Longview and some additional property.

I don't have a very clear recollection of the contract which is part of the sale which gave Long-Bell a very advantageous purchase of power, but in any event I regarded it as a very advantageous sale from Long-Bell's standpoint.

When I stated in Plaintiff's Exhibit B-12 in substance that I did not disclose, in talking with Mr. Fentress about this proposed consolidation, anything about the affairs of the Long-Bell Lumber Company, I had nothing in mind at that time with reference to their financial condition, but was referring to the whole situation. I told Mr. Fentress how highy we regarded Long-Bell.

It was not the purpose of the conference to refer to any particular affairs of the Long-Bell Lumber Company. It was a conference about the general lumber industry. Long-Bell was purely incidental as to how they fitted in the picture.

I cannot recall whether or not the satisfactory attitude of the commercial banks, with the exception of Lonsdale's bank, to which I refer in that letter, was due to the fact that with the exception of Mr. Lonsdale's bank all of the commercial banks had indicated an intention to renew their line of credit.

I cannot say that at this time or at any time the Chase National Bank refused to renew its loan, or what suggestions, if any, the Chase National Bank had with respect

to a continued line of credit from all of the commercial banks for the benefit of Long-Bell. I don't remember, because we had no negotiations whatever with any bank and so far as I recall none of those details were discussed with me at any time by Mr. Andrews or by Mr. Long.

I presume that in the letter marked Plaintiff's Exhibit B-14, when Mr. Long stated that in connection with the sale of the power house there would be a retirement of all bonds up to and including 1933, he meant that the sinking fund of the Long-Bell Bonds would be taken care of up to that date. The Long-Bell Lumber First Mortgage issue contained a provision for a sinking fund by which for every 1000 feet of timber or logs cut or other sales of property covered by the mortgage, a certain amount of money went into a sinking fund for the payment of the bonds, which sinking fund would be paid in accordance with the mortgage up to and including 1933.

I do not recall any further talks with or letters from Mr. Long with reference to any negotiations with the Chase National Bank referred to in Plaintiff's Exhibit B-13.

In Plaintiff's Exhibit B-15, Mr. Long is discussing the question of the merger of a number of lumber companies into a larger group, and the financing thereof.

I am sure we would not have been discussing the putting out of securities upon this merged property if we had had any doubt about the future or the sound condition of the Long-Bell Lumber Company, nor did we at the time of the receipt of any of these letters have any doubt as to the soundness of either the securities or properties of Long-Bell.

With reference to Plaintiff's Exhibit B-16, I knew nothing about that letter other than what the letter discloses. It was a matter that would not come to my attention and was dated back in 1925.

Mr. Matthessen, who apparently received an answer to this letter, had nothing to do with the Local Improvement District Bonds. He was working upon corporate issues.

Mr. Gamble: In order that I may not overlook any one of these exhibits, I now offer in evidence Plaintiff's Exhibits B-1 to B-16, both inclusive.

Mr. Johnston: Well, I make the same objection that I have heretofore made as to their competency, materiality and relevancy to any issue properly in this case, or of any claim of misrepresentation upon which the plaintiffs have a right to rely in this case.

I would like the opportunity of looking at the special

exhibits and see whether there is any special objection in addition to them, which I might want to make.

The Court: Well, we will admit them subject to your right to look at them, and then you can put into the record any further objections that you have.

Mr. Johnston: With respect to Exhibits B-2 and B-3, I offer in addition to the general objection heretofore offered the objection that neither of these circulars were relied upon, and are relied upon by the plaintiff, as containing representations upon which the plaintiff relied in the purchase of these bonds, and are, therefore, no proper part of the plaintiff's case; that as to Exhibit B-4, being an issuing circular relating to a collateral gold note issue, that nothing in any of the alleged misrepresentations involve this issue or the circular issued thereon. For that additional reason it is objectionable.

Further, as to B-6, which purports to be a plan, never carried out, for the merger of certain lumber interests, being the fir industry on the west coast, that such Exhibit, in addition to the reasons heretofore stated, would in any event be in and of itself inadmissible and incompetent to prove any facts.

I think the others are already covered by the general objection which I made at the time.

(Plaintiff offered EXHIBITS B-1 to B-16, and they were admitted by the Court over objection of counsel for defendant.)

R. T. DEMSEY, called as a witness on behalf of plaintiff, being first duly sworn, testified as follows (by deposition):

Direct Examination by Mr. Howland.

My name is R. T. Demsey, and I live in Kansas City, Missouri.

I am Vice President of the Long-Bell Lumber Company, and work in a more or less general capacity in connection with the executive, administrative and corporate affairs, as well as being the principal financial and accounting officer of the corporation.

I have had my present position since 1923. I was secretary from 1914 to 1923, and prior to that I held no particular title. Since 1923, the general scope of my duties has been about the same, although probably it has more or less broadened with the passing of the years.

I have been active in the affairs of the Long-Bell Lumber Company up to and including the year 1930. I think probably I have been connected with the Longview Company and the Longview Suburban Company in an official capacity from the time of their organization in 1923. They were both wholly owned subsidiaries of the Long-Bell Lumber Company, the Longview Company being engaged in real estate operations, with minor exceptions, within the city limits of Longview, and the Suburban Company in the real estate business outside of the city limits of Longview. All of the operations of those companies were located in Cowlitz County, Washington, so far as the ownership and handling of real estate was concerned, with perhaps minor exceptions, in considering the Longview Company.

I don't know whether they owned anything across the river in Oregon, but with very minor exceptions the property was in and near the City of Longview.

I have been a Vice President and Director of the Longview Company for a long time, but I don't know whether I was in 1923, just at the time of organization. The Longview Company was a corporation organized under the sponsorship of the Long-Bell Lumber Company for the handling, development and sale of real estate in the City of Longview.

I have been in Longview, Washington, three times, I think probably in 1923, then the next time in '24 or '25, and I think again in 1927; not for any length of time however.

Mr. Howland: The next questions that we go into are the questions of the ownership by the line of railroad, and then we take up the contracts which this witness had with Halsey, Stuart & Co., the defendant in this action.

The Court: Go ahead. I will overrule the objection.

Mr. Johnston: May my objection, then, show to the entire line, your Honor, without repeating it?

The Court: Yes.

Mr. Howand: Q. When did the Long-Bell Lumber Company acquire the lands which are embraced within the site of the present City of Longview, as you now recall?

Mr. Johnston: I note my objection at that point, if the Court please, to this line of inquiry regarding the land in the city of Longview since it is not contended by the pleadings that any misrepresentations were made by the defendant with respect to the lands or properties in the city of Longview. It is not responsive to any issue raised by the peadings in this case.

The Court: What do you say?

Mr. Gamble: It has to do, your Honor, in connection with the question of damages.

Mr. Johnston: You certainly are not going to start proof of damages before we have even got any proof whatsoever as to the alleged misrepresentations in the case. That is going a little too far backward, it seems to me.

Now, it is not material on the question of damages, but, even so, that would not be a proper scope of inquiry, if I may suggest it to the Court, at this stage. It would mean before you prove your tort you start to prove your damages, which I don't think the Court would permit to be done.

Mr. Gamble: This question also has some bearing on when they acquired the land outside the city where they built the plant. It also has some bearing on the question when the lands were acquired which were included in the Diking District. But this testimony of this witness, of course, is not limited to the question of damage alone; a good many other things he testifies about go to the allegations of fraud, and, particularly, to the allegations of knowledge of facts on the part of Halsey, Stuart & Co., which were not disclosed. We could not take the testimony of the witness piece-meal, we had to take it altogether.

The Court: Are you going to—

Mr. Howland: I might say the evidence along that line is not very extensive. It refers to the properties which Long-Bell Lumber Company and its subsidiaries had in the Pacific Northwest, and what of those properties were under the first mortgage and the portions that were free from that.

The Court: How is that material?

Mr. Howland: On the question of damages.

The Court: What do you mean by that?

Mr. Howland: Well, if the Court please, it is the theory of the plaintiff in this case that the fact of the ownership of this large percentage of all the real estate in the City of Longview by the one landowner, which also was the guarantor of these bonds, had a very direct bearing upon the value of the security, and that that was a material fact in connection with the sale of this issue of bonds to the plaintiff in this case.

The Court: I yet don't see what you mean when you say it has to do with the question of damages.

Mr. Gamble: Your Honor, these bonds were secured primarily, or theoretically, upon the assessment of the lands in the city.

Now, then, if the lands in this city were able to bear the burden of these bonds and other burdens, why, the bonds would have been good.

Now, we have, I think, a perfect right to adduce evidence with respect to the conditions surrounding the lands where were subjected to the lien of the assessment securing the issue of bonds which were offered to us for purchase.

Mr. Johnston: Are you through, Mr. Gamble?

Mr. Gamble: Yes.

Mr. Johnston: That would be so only if there were misrepresentations in this case with respect to the land in the city of Longview, its value, or its ownership, or any other factor in connection with it. It has never been the contention of the plaintiff that these bonds were sold without any representations whatever with respect to those lands and that despite the fact that the taxes have paid off half of this issue it is their contention that that land was of no value. But, that certainly is not competent in the absence of some pleading in this case which justifies proof upon that subject.

The damages, according to the plaintiff's contention, and I think they are correct, determined by the law of Iowa,—the law of Iowa is damages in an action for deceit is the difference, if any, between the value of the security at the time sold and the additional value it would have had had it been as represented. That is the measure of damages. I can not see how this goes to that at all.

The Court: How many questions do you have along this line?

Mr. Howland: In reference to ownership of real estate I think there are some eight questions.

The Court: What is your next subject?

Mr. Howland: The next question that we go into are the questions of the ownership by the line of railroad, and then we take up the contacts which this witness had with Halsey, Stuart & Co., the defendant in this action.

The Court: Go ahead. I will overrule the objection.

Mr. Johnston: May my objection, then, show to the entire line, your Honor, without repeating it?

The Court: Yes.

A. I think probably in 1921 or 1922.

In the same general period of time the Long-Bell Lumber Company acquired not only the land on which the City of Longview is located, but also the land to the west outside of the city limits.

At one time the title rested in the Longview Suburban

Company; also the land on which the Longview Mills stand and the Weyerhauser Mills. They acquired more or less in the same general period of time all of that land that was enclosed by the dike along the Cowlitz and the Columbia Rivers. Maybe along in '21 or '22 they acquired the timber land north of Longview by different purchases.

I suppose there were involved in connection with contracts to purchase and things like that well over 100,000 acres at one time. I don't recall now exactly.

Prior to the year 1920 or 1921, Long-Bell Lumber Company owned some timber land in the State of Washington, and for many years had been interested in operations at Weed, California.

Q. Now, in connection with the development of the timber lands and the construction of the mills at, construction of the mill at the junction of the Cowlitz and the Columbia Rivers in the State of Washngton, did the Long-Bell Lumber Company also construct a line of railroad?

Mr. Johnston: That line of questioning is also objected to on the same ground heretofore stated, not going to any issue in this case.

The Court: The same ruling.

A. Yes, sir.

The major part of that line, probably all of it, was built by the Longview, Portland & Northern Railway Company, a wholly-owned subsidiary of the Long-Bell Lumber Company, organized in September, 1922.

That railroad was about thirty miles long, starting at the town called Ryderwood, Washington, north of Longview, and extended to a point known as Vader Junction, where it touched the Northern Pacific main line between Seattle and Portland; and from that junction followed the west bank of the Cowlitz River to Longview and then across the Cowlitz River to a connection with the Northern Pacific main line opposite Longview.

I had occasion to come in contact with the officers and employees of Halsey, Stuart & Company, of Chicago, Illinois, first I think in 1922, at which time I met Mr. H. L. Stuart and Mr. Shrader.

I don't know what Mr. Stuart's capacity was, but I dealt with him as head of the firm and manager of the organization.

Mr. Frank K. Shrader, to my observation, was more or less active in contracting, developing the facts, and more or less deciding on recommending to his firm the purchase of certain securities.

I may have met Mr. Clarence T. MacNeille, but I don't recollect if it was at this time. Our negotiations generally were with Messrs. Stuart and Shrader.

Q. What was the occasion for your first making any contact with Messrs. Stuart and Shrader?

Mr. Johnston: I object to this line of questions on the same grounds stated to the correspondence offered in evidence, going, as it does, to matters not connected with any of the charges of alleged misrepresentation; and not connected with the particular issue of bonds which are involved in this suit, to-wit, the Longview Local Improvement District Bonds, but going to other negotiations and other transactions.

The Court: Objection overruled.

Mr. Johnston: I ask that my objection show to each of the questions on that line.

The Court: Yes.

A. To negotiate with them for the sale of bonds to be issued by the Long-Bell Lumber Company.

My first contact with Messrs. Stuart and Shrader pertained to the issuance of what were later known as the First Mortgage Bonds, Series A, of the Long-Bell Lumber Company. I think the total issue in 1922 or 1923 was $10,000,000.00, of which, Halsey, Stuart & Company, I recollect, purchased $9,000,000.00 and the Company retained the other Million Dollars. Those bonds were secured by the land on which there was standing timber and the physical properties. The properties that were pledged were specifically described in the mortgage.

Some of the standing timber was located in the south and some in the west, while the plants were located principally in the west. I think Longview, Washington, at that time was the principal location.

Just how the Weed Plant was brought into that first issue, I don't recall at the moment.

This first issue, Series A, came out sometime in 1922. At a later date additional serial bonds were issued under the same mortgage, with supplemental indentures, designated as Series B and Series C; Series B were issued in 1923. I think there were $10,000,000.00 authorized in Series B, but I do not now recall just what amount was issued and sold to Halsey, Stuart & Company at that time. The whole $10,000,000.00 of that series may have been issued at the time of the making of the supplemental indenture, with part of them retained by the company. Series C were issued in 1926, and I think in the amount of about $8,000,000.00.

All of them were probably sold to Halsey, Stuart & Company, as was the major part of the $10,000,000.00 issue of Series B.

Q. Now, do you recall the issuance of, along in 1926, or about that time, of certain securities which were known as Long-Bell Lumber Company Convertible Five Year Six Per Cent Collateral Gold Notes?

Mr. Johnston: I make my objection to that line of testimony for the same reason, relating to an issue not involved in this case.

The Court has in mind all these issues were fully disclosed on the balance sheet, and there is no contention of any concealment or misrepresentation, or anything else, with respect to these issues of bonds.

The Court: The same ruling.

Mr. Johnston: May my objection show to this line, please?

The Court: Yes.

A. Yes.

This $3,250,000.00 issue was an obligation of the Long-Bell Lumber Company secured by a deposit of Longview, Portland & Northern Railway Company Bonds of the same amount. They were called "Convertible Five-Year Six Per Cent Collateral Gold Notes," issued as of December 1, 1926, and maturing on December 1, 1931. They were purchased by Halsey, Stuart & Company somewhere near the date of issue. I participated in the negotiations which consummated in the issue of the Five-Year Collateral Gold Notes with Mr. Stuart and Mr. Shrader representing Halsey, Stuart & Company. There may have been some other men involved in connection with getting the information.

In connection with the issuance of the Series A, B and C Bonds, Halsey, Stuart & Company sent both Mr. Shrader and Mr. MacNeille to visit Longview, but I don't know what years they were present there. I only know this by hearsay since I wasn't out there nor did I see them there.

Q. Do you recall, Mr. Demsey, that after the lands located at the junction of the Columbia and Cowlitz Rivers were acquired that in order to develop those lands it was found necessary that an extensive system of dikes be constructed?

Mr. Johnston: I object to this line of inquiry, going into the Cowlitz County Diking District Bonds for the reasons I have heretofore stated to the Court.

The Court: The same ruling.

Mr. Johnston: I ask that my objection show to this entire line of inquiry.

A. Well, it was found necessary to construct dikes, but I don't think it was,—I think it was known before the lands were acquired (laughing).

I knew that some time after the purchase of the lands where the present City of Longview is located that a diking district was organized embracing largely the lands of the Long-Bell Lumber Company or its subsidiaries. This diking district was financed first by issuing its warrants in payment for the construction as it proceeded. When the construction was completed, the diking district issued its bonds and retired its warrants. The warrants were issued to the Long-Bell Lumber Company, whom as I recollect performed the work either itself or through contractors advancing the funds necessary to defray the expense, receiving in exchange the warrants.

The exchange of the warrants for the bonds of the diking district was negotiated by Mr. Long and probably Mr. Andrews, but perhaps some officers on the West Coast were involved in it. I think that the point of issuing the bonds was reached when I came into the picture, with others of my associates.

I don't think Halsey, Stuart & Company discounted any of those warrants.

The physical construction of the dikes took place probably in the years '23 and '24 and perhaps '25. The bonds were issued in 1925 and came into the hands of the Long-Bell Lumber Company. My recollection is that we had obtained funds from the pledge of those warrants, and I believe principally in San Francisco.

The Long-Bell Lumber Company acquired from the Drainage District the entire issue of $3,260,000.00 of Consolidated Diking District Bonds in 1925, which were sold to Halsey, Stuart & Company about the middle of the year 1925. These bonds were guaranteed by the Long-Bell Lumber Company.

I don't believe I had anything to do personally in negotiating this sale to Halsey, Stuart & Company, nor do I recall who handled the transaction for Halsey, Stuart & Company. There were other bonds issued by the City of Longview or the Local Improvement Districts within the City at about the time or subsequent to the time the Diking District Bonds were issued.

Q. What was the nature of those bonds that you now refer to?

Mr. Johnston: If the Court please, I object to this line of inquiry, since it goes to facts in connection with the original issue of the Local Improvement District Bonds which are not alleged to have anything to do with the claimed misrepresentations, which have no basis of materiality, competency or relevancy in this case, since there was no representation with respect thereto made; and I ask my objection to the entire line of questioning be noted.

The Court: Same ruling; go ahead.

A. They were Local Improvement District Bonds to pay for grading and graveling and paving, curbing, sidewalks, sewers, and bridges or trestles. I do not think any of the street improvements were constructed by the Long-Bell Lumber Company. My recollection is that the Longview Company constructed the sewers. I must differentiate with respect to the subsidiaries as they all had separate records. While the Longview Company constructed the sewers, it is my recollection that the Local Improvement Districts were organized by the City and that the City contracted directly for the construction of the street improvements, paving and sidewalks, curbing, graveling, etc. I may not be wholly correct, but I think that is generally true. I am a long ways from Longview.

Q. I wonder if you would refer to that correspondence and see if you can locate a letter dated July 13, 1925, or the carbon copy of it, which you wrote to Mr. W. I. Sleep, who was associated with Halsey, Stuart & Co., and it pertains to the Long-Bell Lumber Company guaranteeing the payment of certain city warrants discounted by Halsey, Stuart & Company for one of the contractors at Longview?

Mr. Johnston: I object, of course, to this line of inquiry on the ground that it does not go to any material matter. The question of the procedure with respect to the issuance of warrants and the turning of those warrants into bonds, and so forth, is not involved in any way in any of the alleged misrepresentations relied upon by the plaintiff, nor are these facts relevant thereto.

The Court: The same ruling.

A. (Witness refers to records): Yes, I think that is referred to in paragraph "1", I guess (indicating subpoena duces tecum). Yes, here is the letter (indicating carbon copy of letter) you are talking about (handing said carbon copy of letter to Counsel).

The letter of July 13, 1925, which I wrote to Mr. W. I. Sleep, associated with Halsey, Stuart & Company, recalls to my mind that the Long-Bell Lumber Company had cer-

tain negotiations with Halsey, Stuart & Company with reference to discounting the city warrants issued to contractors.

As I recollect it, there was a relatively small amount of those bonds that were ever discounted by Halsey, Stuart & Company, and I do not recollect that Long-Bell Lumber Company ever had any of those warrants, and that transaction was not handled here; it was handled in the west. Long-Bell never discounted any of the warrants. We didn't come into that situation. We wanted those contractors to stand on their own bottom when they made their own contracts and to go on through with it, doing their own financing.

It is my understanding that Halsey, Stuart & Company did discount some of the warrants in 1925 with respect to some of the work done by the Olympic Construction Company at Longview, with a repurchase agreement on the part of Long-Bell, which we made. That was at the time work of constructing the improvements in the various districts was in progress. I think there were twenty-three Local Improvement Districts in the City of Longview. We were only concerned with 19, being Nos. 1 to 15, inclusive, and 17 to 20, inclusive. As I recall it, 16 was a small District and the bonds were never released by the City. There was a considerable amount of legal work incident to the organization of the various Local Improvement Districts and it was arranged that one of the members of the firm of Baker, Botts, Parker & Garwood, which then had an office in Kansas City and was General Counsel for the Long-Bell Lumber Company, to handle part of the legal work for the City of Longview, residing there. This was Mr. Lombardi, but I am not sure he was a part of that firm at that time. That is, Mr. Cornelius E. Lombardi.

Mr. Lombardi: May I make a suggestion to the witness? Am I permitted to?

Mr. Howland: That is all right.

Mr. Lombardi: I want to suggest to the witness that a man by the name of Mr. J. H. Secrest is the one who did handle the local Improvements. I think he is confused. I did handle the diking matters, but very little of the local Improvements. It was an attorney by the name of John H. Secrest.

Mr. Howland: Q. Were you acquainted with Mr. Secrest?

Mr. Johnston: As a matter of fact, Mr. Howland, what you are asking Mr. Demsey to testify to is something that is not within his knowledge. He wasn't in Longview, he was in the office here.

I was acquainted only slightly with Mr. John H. Secrest. My recollection is that he was at one time City Attorney of Longview. I have a recollection that he was at one time associated with Long-Bell, but that I never had any occasion to deal with him to any extent.

The issuance of the Local Improvement District Bonds of the nineteen or twenty districts, which I have mentioned, were guaranteed by the Long-Bell Lumber Company in a total amount of approximately $3,150,000.00, which were sold to Halsey, Stuart & Company at different times. My recollection is that I was present when the subject of the sale of the first block of Local Improvement District Bonds to Halsey, Stuart & Company was discussed and it was agreed they would purchase the bonds.

Q. Where was that conference held?

Mr. Johnston: If the Court please, I object to this line of inquiry since it goes to no matter material to any issue in this case, none of the claims of the plaintiff being predicated upon negotiations leading up to the purchase and guaranty of these bonds, that not being in dispute or a matter in issue.

The Court: The same ruling.

A. Why, I don't know that I can pin it down to any one conference. I think that I had,—I was present in Chicago when those matters may have been discussed, probably in 1925, possibly in 1924.

I don't recall any definite conference with respect to the purchase, nor do I know who it was that handled those negotiations on behalf of Halsey, Stuart & Company.

I was acquainted with Mr. Walter I. Sleep, one of the men associated with Halsey, Stuart & Company during that period. I am two thousand miles away from Longview and spent practically no time there, so it would only be from hearsay that I would know Mr. Sleep made a trip to Longview in May, 1925.

Referring to a letter dated April 11, 1927, addressed to Halsey, Stuart & Company, the original of which I dictated, the purchase of certain of the Longview Local Improvement District Bonds had already been made when I wrote this letter. It related to a completed transaction. That letter was in answer to a letter dated April 8, 1927, written by Halsey, Stuart & Company.

I refer to District No. 11 in this letter, but as a matter of fact it had no relation to the matters that were then under correspondence because the bonds for District No. 11 were sold and delivered to Halsey, Stuart & Company

along in June or July of '26. We were not then making delivery of those bonds.

When the letters which had been marked as Exhibits W-1 and W-2 were being written and received by me, I was dealing with some of the District which bore later numbers. Halsey, Stuart & Company had, some months prior to the date of these letters, acquired the bonds of Local Improvement District No. 11, and they pertained more particularly to some of the later Districts, such as 12-14-17-18 or 19.

I doubt that the operating statements of the earnings of the Long-Bell Lumber Company were furnished to Halsey, Stuart. What I think they got was merely a summary of the consolidated earnings statement, very brief.

After Halsey, Stuart entered the picture in doing all this financing for Long-Bell Lumber Company which I have described, we furnished them earnings statements from time to time, probably not oftner than quarterly, maybe not that often. During the earlier portion of the financing they weren't furnished because we didn't issue the so-called earnings statements in 1925. This was not of the Long-Bell Lumber Company but of the Long-Bell Lumber Corporation of Maryland, which owned practically all of the stock of the Long-Bell Lumber Company. It was a consolidated statement which embraced the Long-Bell Lumber Company and all subsidiaries. It was a quarterly earnings statement that was made public at the end of each quarter.

Q. Commencing about the year 1928 or 1929, is it not true that the Earnings Statements were furnished to Halsey, Stuart somewhat more frequently than they had previously been?

Mr. Johnston: I want to object, if the Court please, to this line of questions, because it is not material or relevant to any issue in the case, and does not touch any alleged misrepresentation.

The Court: The same ruling.

A. I don't know as to that, or whether that is true or not.

The letter of May 2nd was answered by me referring to the quarterly statements which were made public.

I don't recall that we furnished monthly statements for the first six months of 1930 showing in a consolidated statement form the monthly results with respect to earnings of the Long-Bell Lumber Company.

We made up monthly statements for our own information or for that of the officers of the Long-Bell Lumber

Company during the early part of 1930, but they were not for general distribution to our security-holders.

There is a letter here dated August 11, 1930, referring to the May and June statements of the Long-Bell Lumber Corporation and its subsidiaries. That letter is signed by Halsey, Stuart & Company, and addressed to the Long-Bell Lumber Company, for attention of R. T. Demsey, marked Plaintiff's Exhibit W-3.

This exhibit refreshes my recollection in that it mentions receiving monthly statements for the months of May and June.

I do not know as a matter of fact that monthly statements of the earnings of the Long-Bell Lumber Company and subsidiaries were furnished to Halsey, Stuart & Company each month during the first six months of 1930. I have located nothing in my file that indicates such to be the fact, nor do we have any letter transmitting the May and June statements referred to in Plaintiff's Exhibit W-3.

Without an examination of the records, I am not familiar with the trend of the earnings of the Long-Bell Lumber Company and subsidiaries over the period from 1926 to 1930, inclusive. I haven't tried to keep those in mind.

The letter, Exhibit W-4, is the original letter addressed to me by Mr. Shrader, of Halsey, Stuart & Company of May 2, 1929. I also have a letter dated May 14, 1929, addressed to Mr. Bromwell, of Halsey, Stuart & Company, marked Plaintiff's Exhibit W-6. The letter of May 14, 1929, was in response to a letter addressed to me by Mr. Bromwell under date of May 11, 1929, marked Plaintiff's Exhibit W-5.

The statements referred to in Exhibit W-6 are earnings statements of the Long-Bell Lumber Company and subsidiaries for the first three months of the year 1929.

Q. And the letter, I note, says that the first quarter of 1929 showed unfavorable results, as compared with the first quarter of 1928: Do you know to what extent there was a difference in those figures, and in what respect they were unfavorable?

Mr. Johnston: Just a moment. I didn't realize that that was going into—I thought it was merely preliminary.

I object to going into all of this line of testimony, if the Court please, with reference to the general earnings over a period of years of the Long-Bell Lumber and its subsidiaries, or its subsidiaries, because that is not a proper issue in this case; it does not relate to any charge of alleged misrepresentation or go to any of the issues raised by the pleadings in this case.

The Court: The same ruling.

Mr. Johnston: And I ask that my objection go to the entire line of questioning.

The Court: Yes.

A. I think,—as I recollect it, I believe there was One Hundred Thousand Dollars difference between the first quarter of 1929, to the disadvantage of 1929, compared with the first quarter of 1928. That is approximate, you understand.

I was acquainted with a Mr. Utley, of Halsey, Stuart & Company, and understood that he directed trading in securities.

I conferred with him in connection with the purchase of Series A, B and C bonds of the Long-Bell Lumber Company to satisfy sinking fund requirements.

Q. Now, in the Indentures which were issued to secure the First Mortgage Series A, B and C Bonds, was some provision made for the retirement of certain bonds periodically?

Mr. Johnston: I object, if the Court please, to this line of inquiry, going into the question of retiring bonds under First Mortgage Bonds, Series A, B and C, and the correspondence with Halsey, Stuart, the conferences with Halsey, Stuart with reference to purchase of bonds for the retirement fund, since it does not go to any issue in this case and is not material, relevant or competent.

The Court: The same ruling.

Mr. Johnston: I ask that my objection go to the entire line of testimony.

A. There was a schedule of retirement.

Halsey, Stuart & Company were not formally designated as a "Sinking Fund Agent", or anything of that sort. Any work they did for us was merely done at our request, as any other trader might have done it. We might have asked anybody to purchase on the market,—they were acting as our broker, you might put it that way.

My recollection is that Halsey, Stuart & Company may have purchased bonds of the Long-Bell Lumber Company for us during the years 1928, 1929 and 1930. I wouldn't attempt to say at what figure those purchases were made; that is a three-year period and the market was a fluctuating thing.

Q. Can you tell us, in a general way, whether the First Mortgage Bonds of the Long-Bell Lumber Company, at that time were selling in the market at par, or less than par?

Mr. Johnston: I object to this line of questioning for the same reasons, as to a lien subsidiary to the same ones I just objected to.

The Court: All right, the same ruling.

Mr. Johnston: That is going into the market, if the Court please, upon the Long-Bell First Mortgage Bonds, for all of the reasons previously stated.

The Court: The same ruling.

A. Less than par.

There were a good many bond purchases effected by Halsey, Stuart & Company for the account of the Long-Bell Lumber Company, but I don't try to carry in my mind the schedule of payments required under the terms of the Sinking Fund Agreement.

The brokerage commission paid by the Long-Bell Lumber Company in connection with these transactions conducted by Halsey, Stuart & Company was probably not paid as a separate item; there may have been some fee included in the final prices that we paid.

Plaintiff's Exhibit W-7 is a letter dated June 25, 1929, addressed to me from Halsey, Stuart & Company, signed Nelson M. Utley. This relates to a particular transaction, and refreshes my memory as to that particular transaction, but I don't recall whether the charge therein is an absolute uniform charge with respect to all bonds purchased. That refers to an average cost on a number of purchases.

Plaintiff's Exhibit W-8 is a letter dated June 27, 1929, addressed to Mr. Utley by me.

I was not familiar at that time with the rate customarily charged by brokers for acquiring bonds for sinking fund transactions.

We did not order the purchase of any bonds in the open market.

I probably had the impression at that time that, for New York Stock Exchange listed bonds, a quarter of one per cent. commission was the standard charge, as referred to in my letter, Plaintiff's Exhibit W-8, dated June 27, 1929.

During 1930, Halsey, Stuart & Company continued to make purchases of bonds for sinking fund requirements.

The bonds referred to as Series A, B and C Bonds were the First Mortgage Bonds of the Long-Bell Lumber Company, and were secured by mortgages upon the physical properties of the company, plus land and timber, including mill plants and standing timber, and other physi-

cal assets. I suppose they were also direct obligations of the Long-Bell Lumber Company.

The letter identified as Exhibit W-9, addressed to me, dated April 2, 1930, signed by Mr. Utley, of Halsey, Stuart & Company, says, "We are bidding 72 for the bonds and I believe all deliveries up to this time have been made at 72½, or less".

The letter of April 18th, signed by Mr. Utley of Halsey, Stuart & Company addressed to me and identified as Plaintiff's Exhibit B-10, says, "However, I believe that unless there is some decided change in the immediate future in the bond or lumber markets that we will be able to satisfy your sinking funds at an average price in the neighborhood of eighty. We are now bidding 73 for all series".

There was a certain amount of money that was to be deposited in the sinking fund as money, and the bonds could be acquired out of that sinking fund on the basis of the market price. The net effect of it was that obligation of the Long-Bell Lumber Company were being retired at less than par.

When the bonds were delivered to the trustee under the mortgage, the trustee only released cash from the sinking fund at the price at which the bonds had cost the Long-Bell Lumber Company. In other words, they didn't release one hundred cents on the dollar if the bond was turned in at a cost of ninety cents—they released only ninety cents. If the bond was turned in to the trustee at eighty, it released eighty. The cash was deposited with the trustee in the sinking fund and the idea was that we would retire a larger amount of bonds than we would otherwise be able to do, and the Long-Bell Lumber Company profited to that extent, as well as the remaining bondholders.

The Long-Bell Lumber Corporation was a company that owned practically all of the stock of the Long-Bell Lumber Company.

Q. And it had,—the Long-Bell Lumber Corporation had two classes of stock?

Mr. Johnston: Now, if the Court please, I object to this line of inquiry, going into the stock of the Long-Bell Lumber Company, or the Long-Bell Lumber Corporation, and the market on that stock, as not being relevant, competent or material to any issue presented in this case under the pleadings.

The Court: All right, the same ruling.

Mr. Johnston: I ask that my objection go to the entire line of testimony.

A. Yes.

They were designated Class A Common and Class B Common, Class A having certain preferences with respect to payment of dividends and liquidation. It is my recollection that temporary certificates for a portion of the Class A Common were issued in December, 1924, and for a period the Long-Bell Lumber Corporation paid dividends upon its Class A shares. The last dividend paid on Class A shares was to my recollection September 30, 1927. We had been paying on a quarterly basis. I was Vice-President of the Long-Bell Lumber Corporation and sometime between September 30, 1927, and December 31, 1927, we decided to omit the dividend; undoubtedly it was informally.

Such a decision was for the Long-Bell Lumber Corporation to make. Halsey, Stuart & Company were never in any way concerned with the Long-Bell Lumber Corporation. If they were given advance notice, and I don't recall that they were, I would guess that it would be just a natural thing to mention it to them because of our rather close business relationship.

The Long-Bell Lumber Company, which is a Missouri corporation, had no correspondence with the New York Stock Exchange, its stock not being listed. The company which had correspondence with the New York Stock Exchange was the Long-Bell Lumber Corporation, a Maryland corporation, whose Class A Common Stock was listed on the New York Stock Exchange.

In connection with the $3,250,000.00 issue of Collateral Gold Notes of the Long-Bell Lumber Company secured by the First Mortgage Bonds of the Longview, Portland & Northern Railway Company, there was no sinking fund requirement.

Q. Did the Long-Bell Lumber Company continue to own the Longview, Portland & Northern Railway Company through the years 1930, 1931 and 1932?

Mr. Johnston: I object to that question, of course, the sale of the railroad, simply because it is immaterial to any issue in this case.

The Court: The same ruling.

A. No, except as to a portion of it.

The twenty-three miles of the Longview, Portland & Northern Railway Company extending south from Vader Junction to Longview across the Cowlitz River to a con-

nection with the Northern Pacific was sold, one-fourth each to the Northern Pacific, Union Pacific, Great Northern and Milwaukee Railways, who took possession on November 2, 1931, part of the purchase price having been paid on October 7, 1931.

The negotiations were started with reference to the disposition of that Railroad in February, 1930. I wrote Mr. Shrader, of Halsey, Stuart & Company, about the proposed sale about February 17, 1930, which letter is Plaintiff's Exhibit W-11.

Q. And what was the "plan" referred to on Exhibit "W-11", on page two of that letter, about purchasing gold notes at a discount, concerning which Mr. Long had telephoned Mr. Shrader?

Mr. Johnston: I make the same objection to this line of inquiry, going to the purchase of gold notes of a note issue which is not competent, material or relevant to any issue in this case, nor does it go to establish any of the alleged charges in the complaint.

The Court: The same ruling.

A. Well, that was, as I now recall, was the thought that possibly we might be able to buy some of those notes at less than par, but also my recollection is, that we found that wasn't feasible, and we couldn't, and it was abandoned, and that the notes were called at par on October seventh.

It was a "half-baked" idea that was never carried out. It was just thought that we might save some money by purchasing these gold notes in the market, but it never was carried out and nobody was asked to do any purchasing. No one was ever designated to act, but in the ordinary course it would have been natural for us to ask Halsey, Stuart & Company to act in connection with the purchase since they had originally sold the notes.

Q. Now, at about that same time, was there under consideration by the officers of the Long-Bell Companies the matter of the sale of a line of railroad located near Weed, California, to the Southern Pacific Railroad Company?

Mr. Johnston: Object to this line of inquiry, if the Court please, the sale of the Weed property covered by general mortgage, as not competent, material or relevant to any issue covered by the pleadings in this case, nor does it have any relevancy to any alleged misrepresentation upon which plaintiff relied.

The Court: The same ruling.

Mr. Johnston: And I ask that my objection go to the entire line.

A. Yes.

The persons referred to in the letter, marked Plaintiff's Exhibit W-12, written by me to Mr. Shrader on February 17, 1930, in the statement, "While in San Francisco, our group called on Mr. Paul Shoup;" are, Mr. R. A. Long, Mr. M. B. Nelson, Mr. J. D. Tennant, Mr. Jesse Andrews and myself, all officers of the Long-Bell Lumber Company, or counsel.

The transaction referred to in Exhibit W-11 was consummated by a loan of $1,000,000.00 made to a wholly-owned subsidiary of the Long-Bell Lumber Company, known as "Weed Logging Railroad Company," by Consolidated Securities Company.

Q. What current requirements did the Long-Bell Companies have in February, 1930, that are referred to in the letter Exhibit W-12?

Mr. Johnston: I object to this line of inquiry; I think this is perhaps—no, I guess it is part of the Weed—it is covered by my other objection, I guess.

A. Well, I think I will have to amplify that statement by saying that the Weed Logging Railroad Company was constructed on land that was covered by the Long-Bell Lumber Company First Mortgage Deed of Trust, to provide for the loan of One Million Dollars by the Consolidated Securities Company to the Weed Logging Railroad Company. The land and the railroad on it had to be released by the Bond-Trustee, to bring this about. The One Million Dollars was deposited in the Bond Sinking Fund Account with the Trustee named in the Deed of Trust for its Series "A", "B" and "C" Bonds.

As for the statement in Exhibit W-12, "It will bring in a large sum for our current requirements", the plan had to be changed in working out the final consummation of it, but it nevertheless applies, in a sense, because the retirement of bonds was a current requirement in that those bonds were maturing in set amounts by schedule.

In February, 1930, the Long-Bell Lumber Company had a substantial amount of outstanding bank loans.

Q. And about what was the amount of those loans, as you now recall?

Mr. Johnston: I object to this line of inquiry regarding the bank loans, as not being competent, relevant or material to any issue in this case.

The Court: The same ruling.

Mr. Howland: I will repeat the question—

Mr. Johnston: I ask that my objection go to the entire line of inquiry.

A. Oh, I think it was somewhat in excess of Five Million Dollars.

I don't recall at that particular time with whom they were placed. We had a group of ten banks with whom we had lines of credit, and this debt was scattered over some of them, but not all of them.

My impression is, without consulting my records, that the outstanding amount of bank loans of the Long-Bell Lumber Company during the year 1929 had been somewhat increased.

The Equitable Trust Company of New York was one of the banks with whom the Long-Bell Lumber Company had a line of credit, and the official with whom the negotiations were conducted in 1929 and the first part of 1930 was Mr. Herman G. Place, who later became associated with the Chase National Bank of New York when the Equitable Trust Company was absorbed by it in the first half of 1930.

In the early months of 1930, I made a trip to New York to confer with Mr. Place pertaining to the extension of bank credit to the Long-Bell Lumber Company and the renewal of its line of credit previously carried with either the Equitable Trust Company of New York or the Chase National Bank of New York. I was accompanied by Mr. R. A. Long and Mr. M. B. Nelson in the first half of May, 1930. We left here about the 5th of May.

At that time the Long-Bell Lumber Company was in debt to the Chase National Bank or the Equitable Trust Company for about $1,000,000.00.

Q. And upon your meeting with Mr. Place in New York City, what did he have to say about the renewal of that line of credit?

Mr. Johnston: I make a special objection to that, on the ground that conversations with Mr. Place could be in no way binding upon the defendant Halsey, Stuart & Co.

The Court: Objection overruled.

A. My recollection is that, in substance, he said that the Chase Bank felt that it could not continue the line of credit unless the Long-Bell Lumber Company could strengthen its current financial position.

The line of credit was not then extended, nor were the obligations renewed immediately following that conference.

The letter, Plaintiff's Exhibit W-13, was sent by me to Mr. Jesse Andrews at Klamath Falls, Oregon, on May 15, 1930, and a copy was sent to him at Santa Monica, California.

When Mr. Long, Mr. Nelson and myself went to New York to confer with Mr. Place, we were representing the Long-Bell Lumber Company. Mr. Place suggested that a new subsidiary company be formed which would conduct the borrowing operations from the bank.

I don't recall that either Mr. Long, Mr. Nelson or myself stopped in Chicago when we returned from New York City.

Q. When did you first discuss with Halsey, Stuart & Company the subject-matter of Mr. Place's suggestion, or demand?

Mr. Johnston: I object to this line of inquiry likewise, if the Court please, on the same ground as heretofore stated, not competent, relevant or material to any alleged misrepresentation upon which the plaintiff relies or has a right to rely on.

The Court: The same ruling.

A. I can't pin that conference down. I didn't keep a diary. I suppose, as nearly as I can fix it, it would be in the spring or summer of 1930.

It might have been several weeks after the conference in New York, I can't fix it definitely. As a matter of fact it wasn't a decision for Halsey, Stuart—they couldn't give us any great amount of advice on it; it was a decision that we, as directors of the Long-Bell Lumber Company had to make; and with respect to saying anything to Mr. Stuart or anyone connected with Halsey, Stuart about it, it was more or less a matter of courtesy, because of our business relations, and that they might know what the situation was.

I don't recall any definite correspondence with Halsey, Stuart pertaining to the demand or suggestion made by Mr. Place.

I don't recall that Mr. Long stopped in Chicago on the return trip from New York City after the conference with Mr. Place early in May. Mr. Long is now dead.

I don't recall whether anyone else made a stop in Chicago at about that time.

Mr. Place didn't make any "demand" on the Long-Bell Lumber Company. Mr. Place gave us the attitude of the Equitable or Chase,—whichever it was at the moment; it was just on the border line of both—with respect to the account of the Long-Bell Lumber Company, and then, as a friendly suggestion for the officers of the Long-Bell Lumber Company to consider, he mentioned that they might think about creating the subsidiary company. He made no demand on us to do it, and I think he would have felt he was out of his province to do that. I don't know whether there is any difference between what you are saying and what I

am saying, but it came in the form of a suggestion to the officers of the Long-Bell Lumber Company to consider.

I cannot tell you when the matter referred to on the second page of Plaintiff's Exhibit W-13 was submitted to Halsey, Stuart & Company.

I cannot fix the date of the conference between the officers of Halsey, Stuart & Company and the Long-Bell Lumber Company other than I did before—but it occurred after the trip to New York and in the spring or summer of 1930.

Mr. Howland: An examination of the file shows no communication addressed to Halsey, Stuart & Company, or any officer of Halsey, Stuart, from the Long-Bell Lumber Company or from Halsey, Stuart to the Long-Bell Lumber Company, with respect to the suggestion of Mr. Place between May 15th and October 31st, 1930.

The Witness: The Long-Bell Lumber Company had certain lumber yards at which its products were sold at retail prior to the year 1930.

Q. Approximately how many of those yards did it operate?

Mr. Johnston: I object to this line of inquiry, going into the retail lumber yard operations of the Long-Bell Lumber Company, as not being competent, relevant or material to any issue in this case, and not going to any of the alleged claims for misrepresentations upon which the plaintiff relies.

Mr. Howland: These were transferred to the new corporation.

Mr. Johnston: And I ask that my objection go to the entire line of inquiry.

The Court: The same ruling.

A. In the year 1930, about one hundred such yards.

They were scattered throughout the southwest,—Kansas, Oklahoma and Texas, with the major portion of them, as I recall, in Oklahoma.

The assets of the Long-Bell Lumber Company in January, 1930, which were not subject to the lien of the mortgage securing the Series A, B and C First Mortgage Bonds, were cash and accounts receivable, notes receivable, retail yard sites and plants, inventories at the retail stores and at manufacturing plants, subsidiary company stock, miscellaneous real estate and improvements scattered at various points, and cut-over land, which classifications constituted the major portion of the property not specifically described in the Deed of Trust.

Included in the subsidiary stock would be the Longview, Portland & Northern Ry. Co.

I think Mr. Bowers was a director of Long-Bell Companies in the early part of 1930.

Q. Is there a letter of June fifth or June sixth, 1930, addressed by Mr. Demsey to Mr. Long and other officers of the Company, and also a letter dated June sixth, 1930, by Mr. Bowers, addressed to Mr. Demsey, in this file?

Mr. Johnston: Objected to on the ground that the formation of the Long-Bell Lumber Sales Company is not competent, relevant or material to any issue in this case as presented by the pleadings here; and I ask that my objection go to this entire line of inquiry.

The Court: The same ruling.

(Whereupon the witness produces a letter and hands same to Mr. Howland.)

The Long-Bell Lumber Sales Corporation was organized as a Delaware corporation during the year 1930, I think in the fall. The date of its incorporation was October 13, 1930.

The general description of the items transferred to the Long-Bell Lumber Sales Corporation by the Long-Bell Lumber Company was as follows: Cash, accounts receivable, notes receivable, retail yard sites and plants, retail yard inventory, inventories at lumber manufacturing plants of logs and lumber, sash, door and other lumber products, subsidiary company stocks, miscellaneous real estate and improvements, and cut-over land.

The properties conveyed to the Long-Bell Lumber Sales Corporation by the Long-Bell Lumber Company were substantially the assets of the latter not pledged under the mortgage issues A, B and C, and the Long-Bell Lumber Sales Corporation also assumed certain liabilities. The Long-Bell Lumber Company received all of the stock of the Long-Bell Lumber Sales Corporation of the par value of $1,000,000.00, with the Company showing on its balance sheet a substantial surplus account or net worth.

After the transaction was consummated and the new corporation organized, deeds were made and bills of sale were executed conveying these free and unencumbered assets of the Long-Bell Lumber Company to the Long-Bell Lumber Sales Corporation. Contemporaneously, a lease was entered into by which the Corporation operated certain of the Mill properties of the Company. The Sales Corporation assumed the commercial bank loans, the outstanding unpaid accounts payable of the Long-Bell Lumber Company, unpaid payroll and wages, and other miscellaneous items.

After the formation of the Sales Corporation and the transfer to it of the assets described, it was the active oper-

ating company that conducted the sales and carried on the commercial business, and paid the salaries of the employees.

The Corporation took over the personnel of the Lumber Company and continued the business which had previously been handled by it. The Long-Bell Lumber Company remained a substantial company after the transfer to the Long-Bell Lumber Sales Corporation, continuing to own saw-mill plants, land and lumber, and having outstanding obligations.

The Long-Bell Lumber Company had discontinued actually carrying on business and manufacturing and selling its lumber, and the Long-Bell Lumber Sales Corporation was acting in its place. I wouldn't say that the Lumber Company was inactive. It had considerable business to transact in connection with the properties which it owned, and in the supervision of those properties to an extent and caring for them. It had a lot of things to do. It had a lot of property and property doesn't take care of itself; it has to be looked after. It sold no lumber. The actual cutting of the lumber, the manufacturing of it into finished forest products, the conduct of wholesale and retail sales, and all of the voluminous manufacturing, and milling, and selling operations which had been carried on by the Long-Bell Lumber Company, after the transfer were carried on by the Long-Bell Lumber Sales Corporation.

The transfer of the Long-Bell Lumber Company properties to the Sales Corporation was made effective as of November 1, 1930. Deeds were executed by the Long-Bell Lumber Company conveying the retail yards, the real estate of which was not under the lien of the First Mortgage of the Long-Bell Lumber Company, and assignment of the accounts receivable was also made effective as of November 1, 1930. Everything was not done just on that date but it was effective as of November 1, 1930. The actual signing was delayed until some days later, but all of the accounting transactions were related back to November 1, 1930.

Q. Now, how long did the Long-Bell Lumber Sales Corporation continue to carry on the business formerly conducted by the Long-Bell Lumber Company?

Mr. Johnston: I object, of course, to the line of inquiry, going into the reorganization proceedings of the Long-Bell Lumber Corporation and the Long-Bell Lumber Company, as not being competent, relevant or material to any issue in this case.

The Court: All right, the same ruling.

A. As I recollect it, the transfer was,—of the Sales Corporation property, and all of it, was made to the Long-Bell

Lumber Company, effective as of the close of business November 30, 1935.

Q. Well, that was after considerable proceedings had been had in the United States District Court, for the Western District of Missouri, involving the Long-Bell Lumber Company, was it not?

Mr. Johnston: I object, of course, to the line of inquiry, going into the reorganization proceedings of the Long-Bell Lumber Corporation and the Long-Bell Lumber Company, as not being competent, relevant or material to any issue in this case.

The Court: All right, the same ruling.

A. That was part of the reorganization to which I refer.

Mr. Johnston: If the Court please, I should have registered an objection and made objection to that line of inquiry, and to the line of inquiry which now immediately precedes, upon this theory, that in addition to the other objections that I have outlined to your Honor, and with which your Honor is familiar, I assume that this evidence and the evidence adduced following is upon the theory of damages.

Now, the theory of damages, as expressed by the plaintiff itself, if it is entitled to recover here, it is the difference between the values of these L. I. D. bonds at the time they were sold and their value at that time in 1930 if they had been as represented—

The Court: The difference between the values when?

Mr. Johnston: At the time of the sale.

The Court: And when else?

Mr. Johnston: And at that same time, if they had been as represented, is the measure of damages.

The Court: What they were really worth and what they were represented to be worth.

Mr. Johnston: At that time, yes.

Now, for that reason, it being conceded to be the rule of damages, and I have no quarrel with that, it is the law of Illinois and the law of Iowa, it does not make any difference which law applies in that respect, but I object to getting into the question of the condition of the Long-Bell Lumber Company, or of any of the facts subsequent to the sale of the securities because, obviously, that cannot affect the issue of damages, and it would be obviously improper. In other words, since this must be determined as of that date, of the respective dates of sale, which are 1930, evidence of conditions subsequent to 1930 are not competent and are irrelevant and immaterial upon the issue of damages, and I want that objection to show, as well as the objections heretofore made.

The Court: What do you say about that, Mr. Gamble? I assume this testimony has to do with the further litigation and difficulties of the Long-Bell Lumber Company?

Mr. Johnston: That is right, subsequent to 1930.

Mr. Gamble: You are correct, your Honor, in that assumption. Mr. Johnston is in error in his statement that we are not entitled to take into consideration subsequent events, for under very respectable authorities it has been held that where it appears that defendants substantially controlled the market on securities purchased, or the false representations made by the defendants were responsible for the level at which such securities were sold, evidence of subsequent developments is admissible for the purpose of aiding the jury in determining what the value, intrinsic value of the securities purchased was at the time of such purchase.

Now, based upon that theory and upon the authorities, the two leading cases are, *Hotaling* v. *Leach*, New York Court of Appeals case, *Hindman* v. *First National Bank*, a Sixth Circuit case, we feel we are entitled to show these subsequent events.

That, particularly, is true, your Honor, when it will be shown that the interest on these particular bonds was paid through the medium of anticipating assessments upon improved and chosen properties of the Long-Bell Companies before the due date of those particular assessments, so that the bondholder himself was tolled into a feeling of security, although there was serious trouble with the Lumber Company interests all the time.

Now, these subsequent events are only resultant from the conditions which were in existence at the time of the sale of these securities to the plaintiff, and we have undertaken and will show further that these conditions were known to the defendant.

I would be very glad, your Honor, to have you examine particularly this case of *Hotaling* v. *Leach & Company*.

Mr. Johnston: I am very familiar with all of those cases. The difficulty with counsel's argument is that there are, as your Honor probably knows, two lines of authority upon the question of damages. There is the one line of authority, which is the majority in this country, which does not follow the Iowa nor does not follow the Illinois rule, and which lays down the rule as to damages that you can recover the difference between the value of the securities at the time and what was paid therefor.

Now, that was the rule in New York, and is the rule applied in the Hotaling case, and it is a rule applied in every one of the cases that counsel has relied upon.

There is no case that I have been able to find where the rule of damages that appertains in the State of Iowa and appertains in the State of Illinois has ever permitted that line of testimony, and it obviously would be unsound. The principle is so clear that where you are establishing damages as of a date you cannot take into account conditions existing long subsequent to that date for the purpose of determining what was the value at the time.

The Hotaling case was decided under the law of New York which follows the majority rule in this country with respect to damages. Iowa and Illinois are in what is now probably the minority rule, although there are a great many other States that have it, although the federal rule is contrary. When we argued the motion counsel was then relying on the federal rule and they had a right, probably, to do that, because there was no decision at that time by the Supreme Court of the United States fixing the law as being the law applicable of the several States. There was a Federal common law at that time which has since been wiped out by the decision of the Supreme Court.

The Court: What do you think the rule is now?

Mr. Johnston: The rule has always been in Illinois and Iowa, with respect to damages in a deceit action, that it is to be determined by the difference, if any, between the value of the securities at the time they were sold, and what would have been their value had they been as represented, that difference.

The Court: Your opponent is not in disagreement over that?

Mr. Johnston: No, he admits that is the rule, but I say the authorities he is citing which say you can go into after events are in States where an entirely different rule of damages has been applied, where that is not the rule of damages, where the rule of damages in a deceit action is not as the rule in Illinois and Iowa.

The Court: As I understand the reason he is introducing this evidence is to show subsequent events indicated what the real situation was at the time of the transaction.

Mr. Johnston: That you cannot do where you have this rule of damages applicable.

The Court: Objection overruled.

Mr. Johnston: There are no authorities, let me say frankly, and your Honor knows I would represent the law only as I understand the decisions show it, and I say there are no authorities which sustain the rule of damages, one which can be applied in this case, whether it is Illinois or Iowa, and I will leave that for the final argument on the

question of law. But, it would not make any difference on the rule of damages because in the both States they are the same; I think probably it is the law of Iowa, but we will discuss that later.

The Court: Objection overruled.

Mr. Johnston: May this same objection show to all of this evidence relating to the question of damages, as well as my objection that it does not go to any material, relevant or competent issue.

The Court: Yes. Proceed.

Q. (interrupting): Well, is it not true,—let me ask you this, Mr. Demsey,—perhaps it is somewhat leading: Is it not true that, after the formation of the Long-Bell Lumber Sales Corporation, and the making of the transfers, to which you have already referred, that the Longview Company and the Long-Bell Lumber Company made no further payments upon the assessments upon real estate located at Longview, Washington, except in so far as selected properties were chosen, and payments of assessments made on them?

Mr. Johnston: That isn't true, Mr. Howland. You know they made the payments in 1931,—all the payments that fell due.

Mr. Howland: No, they didn't.

Mr. Johnston: They paid up the assessments for 1930 in full, and those payments were made in 1931.

Mr. Howland: The default occurred in 1931.

Mr. Johnston: The default of 1931 occurred, but payments were made in 1931, paying for all the assessments in 1930. The 1930 assessments were paid in full, and they didn't become due until May, 1931.

Mr. Howland: I think you are wrong about that.

Mr. Johnston: Well, that was all gone into very fully out there. The records of the City of Longview show that.

Mr. Howland: Q. Let's see if the witness knows about it, and if he can answer the question we will take the answer.

A. I haven't checked into the time of the default.

I think it was in June, 1934, that action was taken by the Long-Bell Lumber Company with respect to a new application under the Federal Bankruptcy Law.

The Long-Bell Lumber Company made application to the Federal District Court at Kansas City for reorganization proceedings under Section 77B of the Federal Bankruptcy Act.

The Long-Bell Lumber Sales Corporation did not at that time, nor at any other time, likewise apply.

In November, 1935, pursuant to the reorganization decree, the Long-Bell Lumber Sales Corporation reconveyed to the Long-Bell Lumber Company the properties which had been conveyed to it. I think that was made effective on November 30, 1935.

At the beginning of business, on December 2, 1935, the Long-Bell Lumber Company operated the properties that had previously been operated by the Long-Bell Lumber Sales Corporation.

Q. Mr. Demsey, are you familiar with the market value of the shares of the Long-Bell Lumber Company, subsequent to the reorganization proceedings, which were made effective about December 1, 1935?

Mr. Johnston: I respectfully submit to the Court that the value of the shares of the stock of the Long-Bell Lumber Company after the reorganization could not by any conceivable theory be competent evidence for the purpose of going into the question of damages back in 1930 as to the value of these L. I. D. bonds.

The Court: I thought the pleadings set up the stock did have some value, and they want to deduct that amount from the amount.

Mr. Johnston: That is just as incompetent, also.

The Court: Don't you set that up in your answer?

Mr. Johnston: No—I answered their allegations, of course, as I must do so.

I say that the—your Honor, how can the question of the value of the stock be material to the question of damages occurring in 1930?

Now, when you are talking about damages as of a given year you must go back as near as possible and reconstruct the position of the parties in 1930. That is elementary. Just as in these cases that I have been trying for many years on the valuation of real estate before the Board of Education, and there was revaluation leases, where they are revalued as of a certain date although it is ten years after, when you try those cases you must go back and establish a value of the land as of that date. So, here, they must establish the value of the securities as of 1930.

Now, what they now hold makes no difference at all, because that is applying an entirely different rule.

The Court: That may make no difference as to value, but it makes a difference as to damages, doesn't it?

Mr. Johnston: No, because the damage is determined by the difference in value in 1930—

The Court: Let us assume on account of what they hold, they got something of you to a certain value, doesn't that reduce the damage?

Mr. Johnston: No.

The Court: Why?

Mr. Johnston: You cannot take into consideration—

The Court: Doesn't it reduce the amount of damages?

Mr. Johnston: You cannot take that into consideration at all. How can you take into account in fixing damages in 1930 events that could not possibly have been in the minds of either party in 1930, and which did not occur until five years thereafter and the results of those events, it cannot be done.

The Court: Suppose we had a transaction in 1930 whereby you got $100 belonging to me and I gave you $100 and then later on I discovered there was something irregular about the manner in which you got that $100 and I brought an action against you to recover and you came in and said that while it may be true I did deceive you about the $100, but you did realize a part of it and your damage can only be the difference between the $100 and what you have recouped yourself.

Mr. Johnston: That would be true if we were applying that rule of damages.

The Court: What rule do you apply?

Mr. Johnston: We apply the rule of damages which the law of Iowa and Illinois lays down, which is, which as I have stated to your Honor, is the difference in value in 1930.

The Court: I understand that, but it seems to me if this plaintiff has something which it did secure from you cannot he set it off?

Mr. Johnston: I don't see how it enters into the question of damages.

The Court: Am I right in what I think the statement of law is?

Mr. Gamble: Yes.

The Court: I will overrule the objection.

The Witness: The present market value of the common stock of Long-Bell Lumber Company, the reorganized company, as quoted in the Kansas City Star of January 4, 1939, was: Long-Bell Lumber Company bid 12, asked 13, while the Preferred was bid 46½, asked 48.

The quotations in the Kansas City papers on January 4, 1936, were: Common, bid 8, asked 12; Preferred, bid 29, asked 33.

I cannot tell you the approximate dates, but I think that the Preferred Stock has sold a little above 70 since December 1, 1935, and the Common Stock has probably sold as high as 30.

There have never been any dividends paid on either the Preferred or Common Stock of the reorganized Long-Bell Lumber Company.

Q. One further matter that I observe that I have overlooked: Mr. Demsey, do you recall that along in 1927, the latter part of 1927, that you attended certain meetings, in company with Mr. Long and Mr. Nelson, in Chicago, which meetings were held by Halsey, Stuart & Company, and at which the Executives of the Long-Bell Lumber Company appeared and addressed the dealers with whom Halsey, Stuart were carrying on negotiations for the sale of the Long-Bell Lumber Company securities?

Mr. Johnston: To that question and this entire line of inquiry I interpose the same objection I have heretofore stated, that it is incompetent, irrelevant and immaterial to any issue in this case.

The Court: The same ruling.

Mr. Johnston: I ask that my objection show to the entire line of questions without repetition.

A. I don't recall appearing at any meeting before dealers. I am talking about outside dealers. I may have been present at some meeting with Halsey, Stuart officials, but I can't recall any outsiders being at any meeting.

I have a faint recollection of attending meetings in Chicago maybe, at which we discussed the price of our Long-Bell securities, but I can't recall any outside dealers. I probably talked a lot of times with Halsey, Stuart officials about the price of Long-Bell Bonds at one time or another, but you have me kind of "stumped" about addressing dealers there. I think we had a good many meetings about the price of Long-Bell securities and the distribution of them.

I imagine that, generally speaking, we did endeavor to comply with all requests that were made on us by Halsey, Stuart with respect to furnishing information. I don't recall that we ever withheld information from Halsey, Stuart that was requested at any time.

Q. Mr. Demsey, have you now secured the information that I requested a moment ago, with respect to the present outstanding shares of Common and Preferred Stock of the Reorganized Company?

Mr. Johnston: Let my objection just previously made with respect to the same inquiry, the same line of inquiry regarding that present value, or any value subsequent to the reorganization, of the preferred and common stock of Long-Bell Lumber Company show to this entire line of questioning?

The Court: Yes.

A. Yes. The par value of Preferred Stock on November 30, 1938, was $15,355,400.00, and the par value of the Common Stock was $9,884,150.00.

The par value of the Common was $50 per share, and the par value of the Preferred $100 per share.

Q. Now, what is the character of the Preferred with respect to having a fixed dividend—does it have a fixed cumulative dividend or not?

Mr. Johnston: The same objection to that line of questioning.

Mr. Gamble: I think we will withdraw it.

The Court: You have gone far enough with that now. Haven't you gone far enough with the story of the reorganization of this company?

Mr. Gamble: I think we have.

Mr. Johnston: I think you have gone too far.

Q. Well, in any event, each share of Preferred now has accumulated at least Seven Dollars and Fifty Cents in unpaid dividends, does it not?

Mr. Johnston: The same objection.

The Court: Yes.

Mr. Johnston: Show my objection.

The Court: Yes.

Mr. Herriott: Then there were offers of exhibits, and I think that is all.

Mr. Gamble: We would like to make those offers separately, your Honor.

(Plaintiff's Exhibits W-1 to W-13, inclusive, objected to by counsel for defendant for grounds which will be later stated at the trial.)

I don't know whether or not Mr. Utley ever made that prospective trip to Longview, Washington, referred to in Plaintiff's Exhibit W-8. I wrote some of our officers there that he might appear and to show him the Mills, but whether he ever got there I don't know.

Plaintiff's Exhibit W-14 is a carbon duplicate of a letter produced by Mr. Lombardi this morning on request from the files addressed by Mr. R. A. Long to Mr. H. L. Stuart, and W-15 is a letter from H. L. Stuart, of Halsey, Stuart & Company, produced from our correspondence files addressed to Mr. R. A. Long.

Q. Mr. Demsey, do you recall that, along in 1929, the latter part of 1929, and perhaps in the early months of 1930, that the matter of a merger of the Long-Bell Lumber Company with certain other producers of lumber and forest products was under discussion and consideration?

—Mr. Johnston: Objected to for the same reasons heretofore given, to all of this line of inquiry, not being competent, relevant or material to the issues presented in this case, and I ask that my objections go to the entire inquiry.

The Court: The same ruling.

A. I remember that a merger was talked about, but it was rather nebulous, tentative, general kind of a plan, whereby some consideration,—I don't recall just what consideration,—that there might be a merger, or a new corporation, or something done that would make a lesser number of separate producing companies involved in the West Coast field. The idea was to stabilize the industry, to reduce the operating of separate companies. This proposal was discussed by the officers of the Long-Bell Lumber Company with Halsey, Stuart.

Q. Along about the early months of 1930,—this correspondence reflects it (indicating),—in addition to the sale of the Longview, Portland & Northern Railroad, and in addition to the procuring of a loan on the line of Railroad at Weed, California, the Long-Bell Lumber Company undertook to dispose of the Power House at Longview, Washington, which I believe supplied the Long-Bell plant with power, and also supplied power for lighting and domestic uses at the City of Longview: Are you familiar with the fact that those negotiations for the disposal of the Power House plants, located adjacent to the Long-Bell Mills, were conducted?

Mr. Johnston: I object to this inquiry, and to the further inquiries along the same line for the same reasons heretofore stated to the Court.

The Court: Objection overruled.

Mr. Johnston: And I ask that my objection go to the entire line of questioning.

A. Yes, sir.

Halsey, Stuart & Company were told that that transaction was under way. The reason for it was to strengthen our current financial position by converting some of the physical assets into current working capital to meet current requirements. Halsey, Stuart & Company were told of our efforts in that direction.

Q. Do you recall that the officers of the Long-Bell Lumber Company, in the early months of 1930, applied to

Halsey, Stuart to do certain additional financing for the Long-Bell Lumber Comany, or its subsidiaries?

Mr. Johnston: The same objection to that line of inquiry that has heretofore been made to the same inquiries addressed heretofore to this witness and others.

The Court: The same ruling.

A. What date did you say?

I don't place the date exactly, but I think it was about the first two or three months of 1930.

I participated in the conferences in which the question of Halsey, Stuart selling additional securities of the Long-Bell Lumber Company was discussed, but I don't recall that they were very extensive conferences. We submitted to them some thoughts we had in mind for their consideration. We submitted the fact that we held two contracts for the sale of timber in Oregon, the payments for which were to be made in installments extending over a number of years, and asked if they could commercialize those contracts by the sale of securities with the contracts as collateral. The general plan was to pledge a sales contract by which the Long-Bell Lumber Company had sold timber tracts on deferred installments, and securities were to be issued by the Long-Bell Lumber Company, with the pledge of the future installments as security for the payment of the advances, but it never worked out in detail.

I don't know who owns the newspaper at Longview, Washington.

Q. Now, I asked you yesterday a little bit about the trend of earnings of the Long-Bell Lumber Company, or Long-Bell Lumber Corporation and subsidiaries. I want to particularly direct your attention to the operations of the Longview Company, at Longview, Washington. What experience did that company have, with respect to making money on its real estate operations?

Mr. Johnston: Objected to for all the reasons heretofore given, including those stated with respect to evidence relating to damages.

The Court: The same ruling.

Mr. Johnston: I object to the entire line of inquiry and ask that my objection so show.

A. I can't answer that question definitely. There is so much involved there.

In 1924, the Longview Company set up a retail sales organization for the purpose of selling and disposing of real estate holdings at Longview, and to operate the property that they owned. The sales were made largely on deferred installments and there were a number of failures

to perform on the installment contracts. It was necessary that those properties be taken back by the Longview Company.

Q. Yes. Now, what was the best year which the Long-Bell Lumber Company had, so far as its operations on the West Coast were concerned,—do you recall what the best year, from the earning standpoint, was?

Mr. Johnston: That, of course, goes to the Longview and to that same objection, to that line of inquiry, as to the earnings of the Longview.

The Court: The same ruling.

A. No, I do not.

Q. Did the lumber industry—and particularly the business of the Long-Bell Company in the Pacific Northwest, undergo a depression prior to the stock market crash in 1929?

Mr. Johnston: That I object to as not competent, relevant or material, as going into the condition of the lumber market, not proper on the question of damages and not proper or material.

The Court: What is your answer to that objection?

Mr. Gamble: It bears on the value of the guarantee of the Long-Bell Lumber Company at the time of the sale of these securities, relating to the year 1929 immediately before the offer of these securities.

Mr. Johnston: I am not going to argue the matter any further except to say to the Court that that is wholly aside the issue in this case. The question in this case is with respect to certain misrepresentations alleged to have been made, and were these representations made.

The Court: Objection overruled. Proceed.

A. As I recall it, there was some slump in business, in the lumber industry on the West Coast, in the year 1928.

Conditions weren't very satisfactory generally.

Mr. Johnston: Of course, show my objection goes to all those questions.

The Court: Yes.

The Witness: The consolidated net earnings of the Long-Bell Lumber Corporation and subsidiaries were as follows:

For the year 1927: One Million, Four Hundred Ninety-eight Thousand, Sixty-five Dollars and Twenty-two Cents;

For the year 1928: One Million, Nine Hundred Thirty-six Thousand, Four Hundred Seventy-eight Dollars and Nineteen Cents;

For the year 1929: One Million, Six Hundred Fifty-nine

Thousand, Three Hundred Thirty-three Dollars and Sixty-three Cents; and,

For the First six months of 1930: A loss of Six Hundred Ten Thousand, Nine Hundred Twenty-one Dollars and Twenty-two Cents.

The Longview Company earnings:

For the year 1927: One Million, One Hundred Eight Thousand, Eight Hundred Seventeen Dollars and Sixty-nine Cents;

And a loss for the next periods as follows:

For the year 1928: Forty-nine Thousand, Six Hundred Fourteen Dollars and Eighty-three Cents;

For the year 1929: Thirty-two Thousand, Nine Hundred Sixty-two Dollars and Thirty-seven Cents;

And for the first six months of 1930: Twenty-two Thousand, Three Hundred Seventy-seven Dollars and Ninety-nine Cents.

Cross-Examination of Mr. Demsey by Mr. Johnston.

Mr. Johnston: The reading of the cross-examination is on matters objected to, most of this line of inquiry, but I will read the cross-examination on the theory—

The Court: You are not waiving anything?

Mr. Johnston: I am not waiving anything by so doing.

Referring to the letter which has been identified as Plaintiff's Exhibit W-2 written to me by Halsey, Stuart under date of April 11, 1927, the typewritten memorandum which appears in the files immediately following this Exhibit W-2 is the suggestion by Mr. Kendall, of our Advertising Department, concerning Longview, referred to in that letter and enclosed with it. Mr. Kendall had been with our Advertising Department for a number of years and was the head of it, giving his attention to all matters of publicity and advertisement in connection with the activities of the Long-Bell Lumber Company and its subsidiaries. He had visited Longview prior to April, 1927.

Referring to Plaintiff's Exhibit W-3, being a letter from Halsey, Stuart to Long-Bell dated August 11, 1930, which concerns, apparently, May and June statements of the Long-Bell Lumber Corporation and subsidiaries, that did not indicate to me that we had during 1930 sent to Halsey, Stuart & Company monthly statements each month. We did send them quarterly statements of the consolidated earnings which were sent to the New York Stock Exchange and by them made public to anybody who wished to see them. They were also put on some of the ticker services,

and appeared in some of the financial papers in New York. Those earnings were likewise supplied to the newspapers in Kansas City and in other cities.

These quarterly consolidated earnings statements were given the same publicity that the earnings statements of any large corporation are given in trade papers, financial journals and in the various services that furnish financial information, all in accordance with the requirements of general publicity by the New York Stock Exchange.

In this letter, Plaintiff's Exhibit W-3, the query of Halsey, Stuart & Company as to whether the June statement particularly had been published was answered a little later in the affirmative; it had been published.

Referring to Plaintiff's Exhibit W-4 and Mr. Shrader's remark that they wished to receive the statements at least as soon as they are published in the newspapers, it was our practice to send to Halsey, Stuart & Company those statements at approximately the same time that they went out to the Stock Exchange and others to whom we furnished them.

Referring to Plaintiff's Exhibit W-6, as a matter of fact from an operating standpoint the first quarter of 1929 was about $200,000.00 better than the first quarter of 1928, according to the statement contained in the letter.

In explanation of the fourth paragraph of that letter referring to the difficulty of explaining this difference resulting from the reserve which had been set up, or the difference between the cost of lumber and the market, I refer to the value of the inventory at the end of 1927 and also at the end of the first quarter in 1928, and the value of the inventory at the end of the first quarter in 1929. The subject of the "value of inventories" of a large corporation in connection with attempting to reflect values at the lower cost, or market, is always one that can lead into considerable confusion and discussion, and to attempt in a brief public statement to deal with "inventory values" at the end of three different periods appealed to me as being something that didn't yield itself to a clear explanation in any brief form. I was simply attempting to warn the person to whom I was writing this letter against an effort to explain this difference in any short or brief manner, by pointing out the difficulties to explain such inventory matters. There was nothing that I was desirous of concealing from anybody with reference to these facts, or that I had any intention of concealing.

On the contrary, we attempt to maintain inventory values on a conservative basis. It was a conservative accounting

practice to set up a reserve for the difference between the cost of lumber and the market, and if we found that reserve to be excessive, then as a matter of accounting practice we would reduce the reserve. That is what happened in 1928, its effect being to correct the inventory value.

Our arrangement with Halsey, Stuart for the purchase of bonds for the sinking fund was purely an arrangement in which we employed them as brokers for that purpose. As a matter of fact, the Long-Bell Lumber Company deposited the amounts required by the Trust Indentures with the Central Trust Company as trustee under the Indentures, and then Halsey, Stuart, acting as a broker or agent in that respect for the Long-Bell Lumber Company, would purchase the bonds and tender them on behalf of the Long-Bell Lumber Company to the trustee and be paid out of that fund the amount which they had paid for the bonds, the Trust Company acting on instructions from Long-Bell Lumber Company.

These various letters referring to such purchases all have to do with purchases made by Halsey, Stuart for the account of Long-Bell Lumber Company for tender to the sinking fund.

Halsey, Stuart & Company naturally purchased those bonds on the market and at as low prices as possible.

The Long-Bell Lumber Corporation Class A Stock was listed on the New York Stock Exchange, and any matters pertaining to the dividends on that stock would be a matter of public record at the Stock Exchange and all notations would be made in regard to dividends as are made of any stock listed on the Exchange.

Halsey, Stuart & Company had nothing whatever to do with the sale of the Class A Stock of the Long-Bell Lumber Corporation.

Referring to Plaintiff's Exhibit W-10, containing the statement, "During the time that the rest of the bond market was much stronger we did not advance the bid on our bonds and continued to buy them, probably because of the general lack of interest, at the present time, in securities of this character", the lumber industry in 1930 was encountering difficulty in the matter of obtaining volume and price. Generally speaking, lumber securities probably were not looked on with a great deal of interest by investors, and that is what was referred to as the "general lack of interest" in this character of securities.

The purchase price of the twenty-three miles of the Longview, Portland & Northern, referred to in Exhibit W-11, was partially paid on October 7, 1931, was finally

paid in full on November 2, 1931, and the purchasers took possession and operated the line from that time. We, of the Long-Bell Lumber Company, considered that transaction very favorable and did everything we could to carry it through to a successful conclusion. The sale was made on a basis of cost, so that the Longview, Portland & Northern received everything they had invested. There was no capital loss on that sale and, in addition, in connection with that transaction, and as a part of it, the Longview, Portland & Northern was granted the right by the purchaser to operate log trains over that part of the track between Vader Junction and the sawmill pond in Longview.

The amount which we would have to pay for the trackage rights would not be greatly in excess of the amount it cost to operate over the line while the Longview, Portland & Northern owned it, and we would be able, by the retirement of the gold notes, for which the bonds of the Longview, Portland & Northern were being held as security, to cancel the interest charges on those gold notes. Thus we believed we would still have in the treasury more money as the result of the sale than we would have in continuing to own these twenty-three miles of the Line.

Halsey, Stuart & Company were interested because they had underwritten the transaction, and were likewise interested in the project to sell or to borrow on the security of the Weed Logging Railroad, because the right-of-way constituted a part of the security behind the First Mortgage Bonds which Halsey, Stuart & Company had underwritten and sold. It was for those reasons that I addressed letters to Halsey, Stuart regarding those two transactions.

I think I said yesterday that I had a general recollection of a meeting with somebody connected with Halsey, Stuart & Company subsequent to May 15, 1930, after I had made a trip to New York with Mr. Long and Mr. Nelson. I couldn't pin it down other than that it occurred sometime in the spring or summer of 1930, following the trip to New York.

My general recollection is that Mr. Stuart was present when the New York trip was discussed. I haven't been able to do better in recollecting it than I did yesterday. I can only say that it was the spring or summer of 1930, and I can't place it by months. My recollection is that Mr. Long, Mr. Andrews and myself were present, and I believe it took place in Chicago.

The substance of the conversations was that the Chase

Bank in New York had suggested that they thought it would be wise on our part to strengthen the current financial position of the Long-Bell Lumber Company and that one way that that might be done was to create a separate subsidiary, wholly owned by the Long-Bell Lumber Company, to own the liquid resources and do the bank borrowing. My recollection about the situation is that we were explaining this to Mr. Stuart so that he would understand the situation as we found it, and I don't know that there was so much soliciting his opinion as there was counseling with him; but my recollection is, stating it briefly, that Mr. Stuart's comment was that if we found that our ability to carry commercial bank loans could only be worked out by having a separate subsidiary, that that was probably the thing to do. As a matter of fact, my recollection is that at the time we had this conference it was not yet decided whether to attempt this method of the formation of a Sales Company. My recollection is that it was still in a tentative form, so far as the officers were concerned. We hadn't created the company; we hadn't done those things that made a definite decision at that time.

We were reporting this to Mr. Stuart as a matter in which we felt he was interested because of the large number of securities Halsey, Stuart & Company had sold for Long-Bell Lumber Company. We had a relationship there over a number of years, and we felt that this was a matter which we should at least tell them about before a decision was reached. It would have been rather unusual had we not.

After the transfer of the assets from the Long-Bell Lumber Company to the Long-Bell Lumber Sales Corporation, the Long-Bell Lumber Company owned all of the capital stock, of a par value of $1,000,000.00, of the Long-Bell Lumber Sales Company.

Of the assets that were transferred, the value, from a bookkeeping standpoint, in excess of that $1,000,000.00 was reflected as a surplus, so that the capital stock plus the surplus represented the net worth of the Long-Bell Lumber Sales Corporation, all of which was owned by the Long-Bell Lumber Company.

As a matter of fact, the difference between the situation prior to the transfer of the assets to the Long-Bell Sales Corporation and subsequent thereto was the difference in the form in which the ownership of the property was held by the Long-Bell Lumber Company.

Although I said yesterday to Mr. Howland that our complete line of credit was not confirmed at the meeting in

May, I note by reference to the letter dated May 15, 1930, that it was a fact that all of the line of credit was confirmed at that time. In other words, Mr. Place did not refuse to extend our line of credit but made a suggestion as to a means of strengthening the current position of Long-Bell Lumber Company. That is my understanding of what I was referring to in my letter to Mr. Andrews dated May 15, 1930.

Notice of the formation of the Long-Bell Lumber Sales Company in October, 1930, and the assets transferred to it from the Long-Bell Lumber Company as of November 1, 1930, appeared in many papers throughout the country and in lumber periodicals. Holders of registered First Mortgage Bonds were given notice of the fact. Creditors were informed to the extent that we thought was required by the Bulk Sales Law of some of the States.

There was no necessity for any formal notice being given to the New York Stock Exchange. I wouldn't be surprised if notice appeared in some of the financial papers. In any event, it was reported to the various credit reporting agencies, such as Dun & Bradstreet; it came to their attention. There was more or less general publicity given to the transfer.

A representative of Dun & Bradstreet, connected with the Kansas City office, called on me and inquired about the creation of a new company. I recall that later the mercantile credit reporting agencies and lumber credit reporting agencies inquired about it.

Referring to Exhibits W-14 and W-15, except that we located them in the files and produced them, they were not matters which came to my attention at the time the letters were written or received.

As far as the consolidation or merger plan, referred to in Exhibit W-15 written by Mr. Stuart, there was some discussion of that plan in a general way when we were in San Francisco on the trip that has been referred to in the other letters, but it never resulted in anything definite. It never got beyond the discussion stage. No plan of consolidation was ever made out by anyone. It didn't bear fruit; it never got beyond the nebulous stage.

In discussing the purchases of land from the Longview Company and the number of defaults, as I said earlier, I haven't in mind any percentages. I said that there were a number of cancellations, but in saying that I meant that the percentage might not be extremely large as compared with the total. I wasn't attempting to state that a large proportion of the installment contracts were defaulted. I

thought I qualified my answer by saying I did not have in mind any percentage of cancellations as compared with the total.

Redirect Examination of Mr. Demsey by Mr. Howland.

Defendant's Exhibit X-1 was forwarded by me to Halsey, Stuart & Company April 11, 1927; and the first delivery of bonds to Halsey, Stuart was in the latter part of '25 and early in '26.

It was my understanding that Halsey, Stuart had already sold a lot of the Local Improvement District Bonds before April, 1927.

On May 1, 1930, the Long-Bell Lumber Company had in addition to the property that was mortgaged to secure the First Mortgage Bonds, all of the standing timber, its mill properties, its retail yards and distribution facilities, its accounts receivable, and its general line of liquid and unpledged assets.

Q. And what security did the Commercial Banks who held the notes of the Long-Bell Lumber Company to the extent of some Five or Six Million Dollars, hold on May 1, 1930?

Mr. Johnston: I, of course, object to this same line of inquiry.

The Court: Objection overruled.

Mr. Johnston: For the same reasons heretofore stated.

A. None.

The notes held by the banks were so-called "short-time commercial loans", on the open note of the Long-Bell Lumber Company, without security. By means of the Long-Bell Sales Corporation, the liquid and unpledged assets of the Long-Bell Lumber Company were taken out of that Company and placed in the Sales Corporation, and then the Sales Corporation executed its notes to the commercial banks.

I didn't understand that the Long-Bell Lumber Sales Corporation had any direct obligation to the Local Improvement District bondholders of Longview, but they could reach through from the Lumber Company to the excess of assets of the Sales Corporation after the debts of the Sales Corporation were paid.

The transaction that I refer to when I spoke about "strengthening the current position of the Long-Bell Lumber Company" was the transaction by which the Sales Corporation was formed, and the liquid and unencum-

bered assets of the Long-Bell Lumber Company were conveyed to the new corporation.

It was probably manifest to anyone examining our statement that we didn't have free cash to pay off the bank loans.

I don't recall that we discussed the fact that the Long-Bell Lumber Company was unable to realize money to pay off these bank creditors with Mr. Stuart in just that form. That is true, or they wouldn't be borrowing money from a bank, which is true of practically every corporation.

The publicity which appeared in some of the trade journals regarding the organization of the Long-Bell Lumber Sales Corporation was brief, as I remember it. They stated that the Long-Bell Sales Corporation had been organized and that it would conduct the manufacture and sale of lumber to the public; that the management of the new company and its general policies would be the same. It is my recollection that the items appearing in the trade journals at that time were in the customary form; merely being headed "Long-Bell Forms New Subsidiary", or something of that sort.

I imagine it would be rather unusual in these news items if there were any statements as to the reason for the formation of the corporation.

I don't know whether Mr. Long or the other officers of the Long-Bell Lumber Company complied with Mr. Stuart's request in Exhibit W-15, to keep him posted on developments with respect to the position of the Chase Bank.

Recross Examination of Mr. Demsey by Mr. Johnston.

While the statements that might have appeared in the press with reference to the organization of the Long-Bell Lumber Sales Corporation were of a general character, the information contained in the financial services was of a definite character, showing the assets of the Sales Company and other details with respect to it.

Redirect Examination of Mr. Demsey by Mr. Howland.

The statements appeared, with respect to the formation of the Lumber Sales Corporation, in the credit reporting agencies, such as Dun and Bradstreet, and the Red Book, and the Blue Book of the Lumbermen, and in

the various mercantile credit reporting agencies which those different associations may maintain.

I have a general recollection that in Standard Statistics, Moody's and Poor's, they referred to the formation of the Long-Bell Lumber Sales Corporation.

F. K. SHRADER, called as a witness, under Rule 43-B, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Howland.

My name is F. K. Shrader. I live in Winnetka, Illinois, a suburb of Chicago. I will have been connected with Halsey, Stuart & Company for thirty years in September, 1939, and have been a Vice-President about twelve years, I cannot recall just the exact date, 1927 is the approximate date. My general duties in the year 1927 and immediately prior thereto were in connection with the investigation and purchase of corporate bond issues, having charge of the so-called corporation buying department. So far as the western organization is concerned, in 1927 I was the executive head of the department of Halsey, Stuart & Company which investigated corporate bond issues which Halsey, Stuart & Company was underwriting or purchasing.

I came to know Mr. R. A. Long quite well, and also knew Mr. R. T. Demsey, Mr. M. B. Nelson and Mr. Jesse Andrews.

I don't recall Mr. Long's title but he was the head of the corporation, with Mr. Nelson as President, Mr. Demsey as the Financial Vice-President I believe, and it was through contact in financial matters that I knew him.

I had something to do with the issue of bonds known as Series A, B and C First Mortgage Bonds of Long-Bell Lumber Company, and I think in connection with that work I went to Longview twice. The first trip I made there it was practically empty, just the mill site and a temporary office. The second and last trip I believe was about three years after that; the town was pretty well built up and the hotel was operating, and it was quite a community.

I think that on my first trip I did go down to the mill site. When I was down there the second time, at least one

of the two mills of the Long-Bell Lumber Company had been located there near the junction of the Columbia and the Cowlitz Rivers. It was located near the water; that is the extent of my recollection now. I don't think that the Weyerhauser mill had been located there by my second visit.

As I recall it, there was a holding company which held the stock of the Long-Bell Lumber Company, it being the Long-Bell Lumber Corporation, the top holding company of the structure.

I think we received consolidated statements of the Long-Bell Lumber Corporation.

I don't recall when the Long-Bell Lumber Corporation was organized.

Mr. Howland: Q. Were you, as an officer of Halsey, Stuart & Co., familiar with the fact that the Long-Bell Lumber Corporation had certain stock that was listed on the New York Stock Exchange?

Mr. Johnston: That is objected to as not being competent, relevant or material to any issue in this case. The stock of the holding company is not involved in the remotest way.

The Court: Objection overruled. Go ahead.

The Witness: I recall they had stock listed on the New York Stock Exchange.

Mr. Howland: Q. Do you recall that that stock that was listed on the New York Stock Exchange was entitled to certain preferences with respect to dividends over other classes or types of stocks of that corporation?

A. I have no recollection.

Mr. Johnston: The same objection.

The Witness: On the details of the stock. We handled none of it. We were not interested.

Mr. Howland: Q. I understand Halsey, Stuart & Co. did not handle or sell that stock?

A. We had nothing whatever to do with it.

Q. Let me ask you this: Do you recall that at about November 26th, 1927, that the executives of the Long-Bell Lumber Corporation decided not to pay those dividends on that stock?

Mr. Johnston: That is objected to as not relevant, competent or material to any issue in this case.

The Court: The same ruling.

The Witness: I recall it happened, reading that letter you have in your hands.

Mr. Howland: Q. Now, is it not true, that some thirty

days or more prior to the time that the directors of the Long-Bell Lumber Corporation took unfavorable action on a dividend of that corporation that Halsey, Stuart & Co. was advised about it by this letter marked "confidential" which you have produced in response to this subpoena?

Mr. Johnston: Objected to as not competent, relevant or material to any issue in this case as to what action was taken by the Long-Bell Lumber Company as respecting dividends on this stock, or whether notice was given to Halsey, Stuart or to the world.

The Court: Objection overruled.

The Witness: The only recollection I have, frankly, is what came to my memory since reading that letter.

Mr. Howland: Q. For the purpose of refreshing your recollection, then, is it not true that on November 26th, 1927, Mr. R. A. Long, Chairman of the Long-Bell Lumber Corporation, in a letter addressed to you, marked "confidential" told you that the chief executives of the Long-Bell Lumber Corporation had decided to pass the dividend on the Long-Bell Lumber Corporation stock for the fourth quarter of that year, and that they desired to make a public statement of that fact?

Mr. Johnston: That is objected to for the same reason, and further for the reason that counsel appears to be reading from a letter. If it is material at all, which I say it is not, if the Court please, the only proper way to prove it is by the letter itself.

The Court: The same ruling.

Mr. Howland: Read the question.

(Question read.)

The Witness: I believe that form of question you put correctly summarizes the letter.

Mr. Howland: Q. Is it not true, also, that in that same letter Mr. Long said that he wanted there to be a general agreement about the form of the announcement that was to be given the papers?

Mr. Johnston: The same objection that we made to the previous question.

The Court: The same ruling.

The Witness: May I just read that paragraph? The letter so states.

Mr. Howland: Q. So I expect the answer would be "yes" to my former question, is that right?

Mr. Johnston: The same objection.

The Witness: It would be "yes".

There was a memorandum consisting of three sheets headed "Long-Bell passes dividend" which was attached to Mr. Long's letter to me. The initials in pencil "F.K.S." on the letter are in my handwriting and the notation is addressed to H. L. Stuart, who was at that time President of Halsey, Stuart & Company.

Exhibit B-17 is a letter addressed to me marked "confidential," bearing the signature of R. A. Long, under date of November 26, 1927.

Mr. Howland: In order to meet one phase of the objections urged by counsel for the defendant, we offer at this time Exhibit B-17 in evidence.

Mr. Johnston: I object to it as not competent, relevant or material to any issue presented in this case, if the Court please, having nothing whatever to do with the sale of the L.I.D. bonds, or the specific allegations of alleged misrepresentation made in this case.

The Court: Objection overruled. It may be admitted subject to your objection.

Mr. Johnston: Does that include the statement attached to it, too?

Mr. Howland: Yes, it includes the statement attached, clipped to it.

Mr. Johnston: My objection goes to that as well.

(PLAINTIFF'S EXHIBIT B-17 admitted in evidence over objection of Defendant.)

The Witness: Halsey, Stuart & Company had nothing to do with the Long-Bell Lumber Corporation stock, except at one time we happened to own a few shares. How we got it, I don't know, but I think it was in settlement of a commission.

I had nothing to do with the issue known as the City of Longview Local Improvement District Bonds. That issue was handled by another Vice-President, Walter I. Sleep, who is now dead.

We did not buy the Long-Bell First Mortgage Bonds Series A, B and C alone. We had at least two associates in the original group, and while we headed the group we did not actually buy all of the bonds.

There were quarterly reports of earnings and operations of the Long-Bell Company and its subsidiaries furnished us at the same time they were furnished the Stock Exchange and other public sources of information. Sometimes we got that information after the other parties to whom it was sent, for I have correspondence here where I was complaining of that fact.

Q. Well, is it not true that on May 2nd, 1929, you com-

plained to Mr. Demsey, the financial vice-president of the Long-Bell Lumber Company, because of the fact that a financial and earning statement of the Long-Bell Lumber Company had been sent to New York before you were given knowledge about it, is that a fact?

Mr. Johnston: That is objected to as not competent, material or relevant to any issue in this case.

The Court: Objection overruled.

The Witness: I will quote from my letter:

"As I have told you on previous occasions, we would like very much to have the statements at least as soon as they are published in the newspapers."

The rest of this letter, addressed to Mr. Demsey, dated May 2, 1929, is as follows:

"Mr. R. T. Demsey,
Vice-President, Long-Bell Lumber Company,
R. A. Long Building, Kansas City, Mo.

Dear Mr. Demsey:—

Referring to our exchange of telegrams today, the quarterly income account was received in our office shortly after I sent you my telegram, it apparently being delayed in the mail.

As I have told you on previous occasions we would like very much to have these statements at least as soon as they are published in the newspapers, as we frequently receive questions which we are not able to answer, not having the figures at hand."

As I recall, we received reports with reference to real estate activities out in Longview, Washington, at more or less irregular intervals. I don't think there was any concerted plan to furnish us these regularly. It was their intention to keep us advised of those sales, there is no doubt about that.

Plaintiff's Exhibit B-18 was undoubtedly received by Halsey, Stuart & Company, as it came from our files.

Mr. Howland: In order to meet the objection of counsel, at this time the plaintiff offers in evidence in connection with the examination of this witness the Exhibit identified as Plaintiff's Exhibit B-18.

Mr. Johnston: That is objected to. It does not go to any issue presented by any of the alleged misrepresentations, and is wholly incompetent, irrelevant and immaterial.

The Court: Subject to your objection it may be admitted.

(PLAINTIFF'S EXHIBIT B-18 admitted in evidence over objection of Defendant.)

Mr. Johnston: It seems to me, if I may respectfully submit to the Court, what counsel are doing here is putting into this record everything which preceded and everything which occurred during the period that the transactions between Long-Bell and Halsey, Stuart, and on what theory I can not conceive, your Honor, because we have specific allegations in this complaint, and these things don't have anything more to do with those allegations—

The Court: I understand the theory to be the general, to show the relationship between Halsey, Stuart, and Long-Bell Company.

Mr. Johnston: It is not competent to any issue presented here.

The Court: That is the way I understand the theory. Is that correct?

Mr. Howland: That is our position, if your Honor please.

The Court: Go ahead.

Mr. Howland: Q. Does this report, which has been marked Plaintiff's Exhibit B-18, show the sales made by the real estate department of the Long-Bell Lumber Company, or Longview Company, at Longview, Washington, the sales of lots located within the city of Longview for any period of time?

Mr. Johnston: I object to that, if the Court please.

The Court: The same ruling.

The Witness: All I can do is read from the document. I did not see it until yesterday:

"Monthly report of April, 1928. Classification: Gross sales this month $14,851.32. Year to date, $192,907.78. Grand total—"

I don't see what that figure should mean. It is $4,875,020. I suppose that is an accumulated figure.

Mr. Howland: Just a moment. The question, I submit, if the Court please, is—I don't wish to encumber the record with a lot of figures, I merely am desirous of showing at this time that the report was received and the general nature of it.

Q. Can you not tell us the general nature of the report, Mr. Shrader, by referring to the Exhibit?

A. It is a general report on sales of real estate.

Q. Does the report also refer to forfeitures and repurchases?

Mr. Johnston: That is objected to. The report itself speaks; not competent, relevant or material.

The Witness: I notice those two words in the language, "forfeitures", and "re-purchases".

It is my recollection that the earnings statements were ordinarily furnished by Long-Bell Lumber Company to Halsey, Stuart & Company quarterly; to my knowledge they were quarterly reports.

Plaintiff's Exhibits B-19, B-20 and B-21 come from the files of Halsey, Stuart & Company.

Q. Tell the jury what those documents are?

Mr. Johnston: I object to that, if the Court please. The documents are the best proof of what they are.

Mr. Howland: This is for identification.

The Court: Go ahead. Overruled. Go ahead, Mr. Witness.

The Witness: Long-Bell Corporation and subsidiaries, combined income, capital stock and surplus account for the five months ended May 31, 1930; same data for three months ended March 31, 1930; and for four months ended April 30, 1930.

My recollection is that we received, as a matter of practice, quarterly reports, but we have received what is apparently a special cumulative statement for the three months ending March 30, 1930, four months ending April 30, 1930, and five months ending May 31, 1930.

I have no way of knowing whether the statements Plaintiff's Exhibits B-19, B-20 and B-21 were the forms customarily furnished to the Stock Exchange by the Long-Bell Lumber Company or if they were published in any financial journal or furnished to the public.

My memory is not sufficiently good to permit me to recall back to 1930 as to whether or not I ever saw any place in which the statements giving the results of operations for the first three months, for the first four months and for the first five months of that year were given any publication in any trade journal or financial service, or anything of that sort.

Mr. Howland: Mr. Shrader,—

The Plaintiff at this time offers Exhibits B-19, B-20 and B-21.

Mr. Johnston: Objected to as not competent, material or relevant to any issue presented in this case.

The Court: Objection overruled. They may be admitted.

(PLAINTIFF'S EXHIBITS B-19, B-20 AND B-21 admitted in evidence over objection of Defendant.)

I knew in a general way in February, 1930, the general scope of the properties which Long-Bell owned. I knew there was such a railroad as the L. P. & N., the stock of which was owned by Long-Bell Lumber Company. I have seen a statement concerning the Weed Logging Railroad near Weed, California, in the files of the Long-Bell Lumber Company, and that there was an electric generating plant which furnished power for the operation of the Long-Bell Lumber Company mills near Longview and also furnished light and power to the City of Longview itself.

Q. Now, were you familiar in the early part of 1930 with the fact that the Long-Bell Lumber Company executives were endeavoring to make cash sales of those properties?

Mr. Johnston: That is objected to as not competent, relevant or material to any issues here.

The Court: Objection overruled.

The Witness: We were advised when the sale was made of the railroad. I am not sure, I don't recall now that we were advised during the negotiations; we may have been.

Q. Now, let us take up Item No. 15 that is referred to on your subpoena duces tecum, a letter dated February 17th, 1930, from Mr. Demsey to you. (Handing a document to the witness.)

Now, is it not true, Mr. Shrader, that shortly after February 17th, 1930, you learned that the terms of a sale of the Longview, Portland & Northern Railroad had been agreed upon between the Long-Bell executives and the executives of certain of the major railroads operating in the Pacific Northwest?

Mr. Johnston: That is objected to as not competent, relevant or material to any issue in this case.

The Court: Overruled.

The Witness: Yes, I believe the letter you have there so indicates.

Mr. Howland: Q. Did you learn what the terms of that sale were, as to whether the purchase price was to be paid in cash or otherwise?

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: I am not sure that we did at that time. We later were advised. I don't recall the contents of that letter right now, but we evidently were advised because the outstanding note issue was paid from the proceeds of that sale.

Mr. Howland: Q. Was it not true that the deal was a cash deal from the start, and that you were advised that

in addition to paying off that particular note issue that $750,000 would accrue to the treasury of Long-Bell?

Mr. Johnston: The same objection.

The Witness: I think the letter so stated.

Mr. Howland: Q. Now, at the same time, Mr. Demsey was writing you letters about the sale of the Longview, Portland & Northern, what is the fact as to whether he was also keeping you advised with respect to the prospective sale or the procuring of a loan of $1,000,000 on the property which was referred to as the Weed Logging Railroad?

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: He also advised us of their negotiations, I think, with the Southern Pacific, I believe it was, with respect to that transaction.

Mr. Howland: Q. Did he tell you at that time that the Long-Bell Lumber Company in the event that transaction was consummated would bring back into their treasury for current requirements a large sum to be repaid over a long period on a comparatively easy basis?

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: I think that was the substance of his advice, yes.

Mr. Howland: Q. And with reference to the sale of the power plant to the Washington Gas & Electric Company during the spring of 1930, were you not told that that sale would be on a cash basis?

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: I believe we were, yes.

Mr. Howland: Q. Were you not told that in respect to that that there would be $700,000 available for current requirements of the Long-Bell Lumber Company?

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: I think that figure was used, yes.

I don't recall that there was any discussion between Mr. Demsey, or Mr. Long, or Mr. Nelson and myself of the need of the Long-Bell Lumber Company for current cash during the early months of 1930. Even prior to the receipt of that letter we were told that they were negotiating with the three railroads for the sale of the L. P. & N. I think that matter took some months to consummate. I have no doubt that they mentioned that to us on various occasions. We were told, in connection with the Weed and the L. P. & N. that there would be money available for current requirements of Long-Bell.

I was familiar with the fact that during 1930 there wa a newspaper published in Longview known as the Long view Daily News. I think we received issues of it.

Q. And did you have any knowledge concerning th ownership of that paper and the plant in which it wa printed.

Mr. Johnston: That is objected to as not competent, rel evant or material to any issue here.

The Court: Objection overruled.

The Witness: I believe it was owned by a subsidiary o either the Longview Company or the Long-Bell Lumbe Company.

It was an affiliated enterprise with the Long-Bell Lumbe Company interests.

I recalled, when I saw that letter, a conference I had o April 4, 1930, with Mr. Long and Mr. M. B. Nelson wit reference to certain financing.

Q. What was that discussed at that conference betwee yourself and Mr. Long and Mr. Nelson?

A. I think they wished to issue a small amount of bond of some sort, on some sort of security—

Mr. Johnston: I object to that, if the Court please, fo the same reason.

The Court: The same ruling.

The Witness: And I tried to tell them as politely as could that we would not be interested.

Mr. Howland: Q. They wanted to issue a small amoun of bonds, I understand. Did they make any suggestion a to what they could offer as security for that issue?

Mr. Johnston: The same objection.

The Court: The same ruling.

A. Well, I presume they offered the usual newspape security, which is rather intangible.

Mr. Howland: Q. And did they make any suggestio to you at that time as to what was to be done with th proceeds of that bond issue if it were taken over and a bond issue was financed by Halsey, Stuart & Company.

Mr. Johnston: The same objection.

The Witness: I presume they did.

Mr. Howland: Q. As you now recall what was it tha they told you they expected to do with the money that they got from that bond issue?

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: I don't recall specifically, but I imagine they would use it for their general corporate purposes.

Mr. Howland: Q. When you say that you imagine tha

they would use it for their general corporate purposes do you mean it would be used for the general corporate purposes of the Long-Bell Lumber Company or its subsidiaries?

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: I presume it would be used for the, possibly first, for the benefit of the direct subsidiary, Longview Company, then eventually to the Long-Bell Lumber Company.

Mr. Howland: Q. Is it not true that Messrs. Long and Nelson at that time and in that conference on April 3, 1930, that there was a discussion both of financing secured by a mortgage on the newspaper, and also by certain tracts of timber and instalment purchase contracts which Long-Bell held?

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: I don't know whether it was that same meeting, but there was discussion with respect to the so-called Lamb & Kesterson contracts.

Mr. Howland: Q. Did you make your report of your conferences with Messrs. Long and Nelson to Mr. H. L. Stuart and certain other officers of the Halsey, Stuart Company?

Mr. Johnston: The same objection.

The Court: Same ruling.

The Witness: I undoubtedly did.

Mr. Howland: Q. You say that, as I understand, Mr. Shrader, that you were not interested at any time in doing that financing for Messrs. Long and Nelson.

Mr. Johnston: The same objection.

The Court: Same ruling.

The Witness: We were not interested in either one that you have referred to.

Mr. Howland: Q. Well, is it not true, Mr. Shrader, that the subject matter of financing the Lamb & Kesterson contracts on the pledge of instalment purchase contract was discussed by you and Mr. Stuart, and that Mr. Stuart at first was inclined to look with favor upon the transaction?

Mr. Johnston: Same objection.

The Court: The same ruling.

The Witness: Well, he undoubtedly had many discussions about it. What his first reaction was I can not recall. But, the thing was brought up repeatedly both by Mr. Long and Mr. Nelson to me and to Mr. Stuart together and independently.

It was brought up on numerous occasions extending nearly until June of 1930, and perhaps a little later.

Q. Were you told at that time that the matter was one of extraordinary importance to the Long-Bell Lumber Company?

A. I think Mr. Long—

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: I believe Mr. Long so expressed himself in a letter to Mr. Stuart.

Mr. Howland: Q. Were you told that it was a matter of extreme importance to the Long-Bell Lumber Company, because of the nervous and critical attitude of the commercial bankers with whom the Long-Bell Lumber Company was then doing business?

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: I believe Mr. Long used those words. I think it was in May, 1930.

Q. You saw that correspondence, and you are familiar with that transaction?

A. Yes, sir.

It would come to my attention within a very short time after its receipt in Chicago, by Halsey, Stuart & Company.

Q. Very well. Now, is it not true that as early as June 1, or June 2, 1930, that you regarded the difficulties of marketing lumber securities were so great that it was almost hopeless to attempt it in connection with any Long-Bell Lumber Company financing?

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: I don't know that I used the words in Long-Bell Lumber Company financing.

I recall that Mr. Stuart went abroad sometime in May, 1930, and I presume he told me what he always said, "you take care of things while I am gone", the Long-Bell Lumber Company, or whatever it might have been.

Q. Had any decision been arrived at by you and Mr. Stuart, or by the executives of Halsey, Stuart & Company as to the disposition that would be made of the Long-Bell Company request for additional financing before Mr. Stuart went to Europe in 1930?

Mr. Johnston: That is objected to as not competent, relevant or material to any issue here.

The Court: Objection overruled.

The Witness: I think not. I think, as a matter of fact, it had not been disposed of when I sailed for Europe shortly after Mr. Stuart's return.

Mr. Howland: Q. Will you refer to a letter written by you on June 2nd, 1930, which is designated as Item No. 24 on the duces tecum subpoena, and I will ask you to refer to that for the purpose of refreshing your recollection, and state if at that time you did not entertain the view that the difficulties in the way of marketing any securities which had anything to do with lumber are so great as to make it almost impossible?

Mr. Johnston: Objected to for the same reason.

The Court: The same ruling.

The Witness: That is what I told him in this letter.

I wrote a letter June 2, 1930, in reply to a letter addressed to me by Mr. Long.

The term "current position" as applied to a corporation balance sheet means to me the relation between current assets and current liabilities. While cash is always desirable in current assets of a corporation, the importance of the amount of cash in relation to other factors would vary, I should think, in different types of industry.

The letter of June 2nd, 1930, which I wrote to Mr. Long was in response to a letter from him to me dated May 29, 1930, which letter is Plaintiff's Exhibit B-22.

I think the correspondence may indicate that the annual report of the Long-Bell Lumber Company for the year 1929 was furnished to us by Mr. Demsey in advance of its release to the public on or about March 21, 1930, and I think he requested us at the time to keep the information confidential. I don't recall whether or not we did so, but we undoubtedly did.

Mr. Howland: Q. In connection with the examination of Mr. Shrader, we desire to offer in evidence Plaintiff's Exhibit B-22, consisting of two pages.

Mr. Johnston: Objected to, if the Court please, on the ground that it is not competent, relevant or material to any issue in this case, relating to matters not in any way connected with the issues here.

The Court: Subject to your objection it may be admitted.

(PLAINTIFF'S EXHIBIT B-22 admitted over objection of Defendant.)

Cross-Examination of Mr. Shrader by Mr. Johnston.

It is quite the customary practice in the investment banking business of the firm for whom one might be financing to ask that their annual financial statement be kept confidential until its release generally to the public.

The statement in the letter is the audited financial statement for the year 1929 which was issued about March of 1930.

The lag between the close of the fiscal year, the same as the annual year in this case, and the date of the issuance of the annual reports is caused by accounting adjustments and a multitude of details. That is a universal experience with large corporations, that their annual audited reports do not come out for several months after the close of the fiscal year.

In my experience of some thirty years in the investment banking business, it was nothing unusual in 1930 or 1931 for reports to be applying to investment bankers in our position for additional financing through the issuance of new securities.

The type of financing which Mr. Long discussed with us, namely, the issuance of some form of security based upon the Lamb & Kesterson cutting contracts, was a type which we had never handled and I doubt if we ever will. It was not the kind of security which we dealt in, in buying from the issuer and selling to our customers. That is also true of an issue of bonds upon a small daily newspaper. It is not the type of thing we normally handled. As I have previously said, we tried politely to say no. Mr. Long was quite insistent, however, and we did not wish to offend a good client any more than necessary.

When I said in my letter of June 2nd to Mr. Long that difficulties in the way of marketing securities having to do with lumber are so great at the present time that it would be hopeless to attempt to market them, I was talking about a new issue of securities secured by timber or lumber properties. I had no reference to the seasoned securities that had been out on the market at that time for five, six or seven years. As a matter of fact, we were dealing in the outstanding bonds of the Long-Bell Lumber Company right along, buying them ourselves at the market with our own money. What I was just discussing was the issuance of new securities at that time in 1930 based upon lumber security. My judgment was based upon market quotations on outstanding securities of lumber companies generally, the price structure in the industry and various factors that naturally would weigh in reaching such a conclusion. During that period the general lumber industry was not in a period of prosperity, while the stock market crash of the preceding October had had quite an effect upon the question of marketing the securities.

I had not the slightest doubt of the solvency and ulti-

mate success of the Long-Bell Lumber Company at that time.

I regarded the sale of the Longview, Portland & Northern Railroad as a very desirable sale for the Long-Bell Lumber Company to make. I considered it another example of the astute, resourceful nature of the management of the Long-Bell Lumber Company. At the time of the proposed sale of that Railroad, Long-Bell Company was asking cost to them as a price.

I also regarded the transaction involving the Weed Logging Railroad and the ultimate arrangements which were consummated with the subsidiary of the Southern Pacific Railroad as a wise and prudent step for the Long-Bell Lumber Company to take, highly desirable if it could be made, but I didn't think they would be able to make it.

The sale of the power plant at Longview was a very commendable transaction from the standpoint of the Long-Bell Lumber Company.

None of the three transactions to which my attention has been directed, then or at any time indicated to me in the slightest that the Long-Bell Lumber Company was in distress or financial peril, or anything of that kind.

I have no recollection of ever having seen the real estate reports from the Longview Company, dated I believe in 1928, until we got it out of the file yesterday.

I had nothing whatever to do with either the original purchase or the sale of the Longview Local Improvement District Bonds.

I had nothing to do with the trading operations of Halsey, Stuart & Company after the original issuance of bonds. There is a separate trading department in which those current transactions in the purchase and sale of bonds from customers and others and to customers and others which does not have anything to do with the original issues is handled. This is separate and distinct, having nothing to do with that department.

I have had my memory refreshed by a memorandum dated April 17, 1924, indicating that I spent April 11th and 12th, 1924, in Longview. The hotel had been completed and they were working on the railroad at that time.

Redirect Examination of Mr. Demsey by Mr. Howland.

Q. You would not feel that a corporation which was about to form a new subsidiary and transfer to that subsidiary all of its free, liquid and unincumbered assets was in, ordinarily, a rather desperate financial plight?

A. I would not.

Q. You would not. The fact that certain creditors of a corporation were demanding that such action be taken, to your mind, would not imperil other creditors at all?

A. You are now dealing in the realm of commercial banking, with which I am totally unfamiliar. That mere fact which you set forth would not indicate to me that a corporation was in desperate financial condition, as you state it.

Q. Would it be an indication of great solvency, in your judgment, if the transfer were being made at the instance of a certain class of creditors?

A. It would indicate to me that they were having some discussion with the commercial bankers and they were demanding certain things.

Mr. Howland: That is all.

Recross Examination of Mr. Demsey by Mr. Johnston.

I first learned that there was any discussion regarding the formation of the Long-Bell Lumber Sales Corporation after the consummation of it when the Long-Bell Lumber Company officials made a return trip from New York. I can not fix it accurately, it was sometime in September or October in 1930. That was after they had returned from New York and had consummated their arrangements with the banks for an extended line of credit for the formation of this Sales Company. That is the first time I ever heard of it.

Redirect Examination of Mr. Demsey by Mr. Howland.

It was my present recollection that the Long-Bell advised us of what had been done on the return of the Long-Bell officials from the trip to New York.

I have no knowledge at all as to what Mr. Stuart may have known concerning those transactions. I am simply saying that so far as I personally can recollect now, my own knowledge of the Sales Corporation was limited to that meeting we had with Mr. Nelson, and I believe with Mr. Demsey and Mr. Andrews, upon their return from New York, which was in September or October.

F. W. HUBBELL, called as a witness on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Gamble.

My name is F. W. Hubbell. I live in Des Moines, Iowa, and I am connected with the Equitable Life Insurance Company of Iowa as President. In 1930, I was Vice-President and Treasurer of that Company, which is organized under the laws of the State of Iowa, issuing policies of life insurance and annuity contracts.

It was organized in 1867. In connection with the issuance of such policies and annuity contracts, it collects premiums, from which it maintains reserves as a matter of fact as well as a matter of law, since it is required by the laws of Iowa to maintain reserves. In 1930, as well as prior thereto, we had undertaken to keep those reserves invested. The making of investments is governed by the statutes of the State of Iowa, with which I am generally familiar.

In 1930, we were not permitted to invest in industrial corporation bonds, but we were permitted to invest in municipal bonds. In 1930, and previously thereto, we spent the funds represented by those reserves in such bonds as a matter of investment.

I know Mr. Frank Wood and knew him prior to 1930, It was my understanding that he was the Sales Manager in Halsey, Stuart & Company's Chicago office. Mr. Frank Wood had something to do with the preparation of the amendment of the Iowa Legislature with respect to the eligibility of investments for Iowa life insurance companies in the year 1927.

The Equitable Life Insurance Company publishes a list of its security holdings at the end of each year, which custom was in vogue at the end of 1929.

Prior to 1930 the Equitable Life Insurance Company of Iowa had acquired $100,000 par value, State of Louisiana Highway Bonds, which matured in 1931, and also prior to 1930 had acquired $200,000.00 of the City of Chicago Tax Anticipation Warrants, which had no maturity.

I knew Mr. Bernard C. Kelley both in and prior to 1930. He was the local representative of Halsey, Stuart & Company, maintaining an office in Des Moines.

Prior to May 1, 1930, the Equitable Life Insurance Company of Iowa had purchased municipal and public utility

bonds from Halsey, Stuart & Company in rather large amounts.

I think that every bond we ever bought from Halsey, Stuart & Company was purchased through Mr. Kelley. There may have been someone there prior to his arrival in Des Moines, but I do not recall it. I knew that Halsey, Stuart & Company were very large investment bankers, having offices in New York and Chicago, and a great many other cities throughout the United States.

Mr. Gamble: Q. I will ask you how you regarded Halsey, Stuart & Company prior to May 1st, 1930?

Mr. Johnston: I think that is the same question.

(Previously objected to as not a competent matter of opinion evidence, which objection was sustained.)

The Court: I think I will let him answer a question like that.

A. I regarded them highly.

As Vice-President and Treasurer of the Equitable Life Insurance Company of Iowa in 1930, I had a great many duties. We had slightly over $100,000,000.00 of assets, $63,500,000.00 of mortgage loans, $17,000,000.00 of bonds, some policy loans and real estate, and I had general supervision of all of those assets.

I first heard of Longview, Washington, Local Improvement District Bonds in 1930 from Mr. Kelley about the first of May, close to that date.

Q. What were the circumstances under which Mr. Kelley told you about the existence of Longview, Washington, Local Improvement District Bonds?

Mr. Johnston: If it was conversation, I submit that the time and place should be fixed, and who was present, and what was said.

The Witness: I cannot recall the exact date or who was present.

Mr. Gamble: Well, where was this information imparted to you?

A. Unquestionably, in my office, in Des Moines.

Mr. Kelley approached me advising me that here were some municipal bonds that carried an interest rate of six per cent, secured by assessments on properties in the City of Longview, Washington, and as additional security they carried the full and complete guarantee of the Long-Bell Lumber Company. I don't think I could give you the number of interviews I had with Mr. Kelley, or what took place at each particular interview. I know that he furnished us with certain information. He finally proposed that we sell to Halsey, Stuart & Company $100,000.00 of

the State of Louisiana Highway Bonds which we had, maturing in 1931, and purchase from them $100,000 of the Longview, Washington, L.I.D. Bonds.

Plaintiff's Exhibit B-1 was delivered to me by Mr. Kelley as part of the information he gave me. Plaintiff's Exhibit B-1 appears to be an offering circular of certain Longview, Washington, Local Improvement District Bonds, dated April 7, 1927.

At the time of my conversation with Mr. Kelley in May, 1930, he gave me a tabulation of the number of assessment districts in Longview, with the amount of bonds that had been originally issued, those that had been paid off, and those that were outstanding. Plaintiff's Exhibit B-23 is that tabulation.

I also received a letter from Mr. Wood, of Halsey, Stuart & Company, which is Plaintiff's Exhibit B-24.

Plaintiff's Exhibit B-25 I first saw during the negotiations for the purchase of these bonds prior to the actual purchase and probably in May. It was brought up to me by Mr. Kelley, as was Plaintiff's Exhibits B-26, B-27, B-28, B-29, B-30, B-31, B-32, B-33 and B-34. I received all of these documents about the same time; probably not all on the same day, but during this period, and from Mr. Kelley.

I gave consideration to the suggestions of Mr. Kelley, and we finally purchased $100,000.00 of bonds and sold $100,000.00 of Louisiana Highway Bonds. Prior to the actual purchase, we checked over all the documents given us by Mr. Kelley which came from Halsey, Stuart & Company, and checked over the balance sheet of the Long-Bell Lumber Company which we were furnished, and we received Mr. Wood's letter, and that was all.

Plaintiff's Exhibit B-1 and B-23 to B-34, inclusive, constitute all the data and information which was furnished to me or to the Equitable Life Insurance Company by Mr. Kelley or Halsey, Stuart & Company prior to the purchase of the $100,000.00 of Longview Local Improvement District Bonds.

I gave consideration, prior to the purchase of these $100,000.00 of Longview, Local Improvement District Bonds, to the statements contained in Plaintiff's Exhibit B-1 as follows:

"Longview is situated about 133 miles south of Seattle, at the confluence of the Columbia and Cowlitz rivers. It has a frontage of seven and one quarter miles on the former and is a port of call for ocean going vessels midway between Portland and the Pacific Ocean.

"Because of its natural advantages and proximity to the timber stands of the Long-Bell and Weyerhaeuser interests, Longview was selected as the site for the vast lumber manufacturing plants of these companies.

* * * * * *

"Manufacturing plants have also been erected by other concerns including the Longview Concrete Pipe Company, Pacific Straw Paper and Board Company, Magor Car Corporation, Standard Oil Company, Longview Paint and Varnish Company and the Central Mill Works, the first unit of the plants of the Longview Fiber Company to cost two and a half millions is now well under way."

I had Plaintiff's Exhibit B-27 prior to purchasing the $100,000.00 of L.I.D. Bonds, and gave very much consideration to the language therein contained, as follows:

"The thoroughly modern electrically operated manufacturing plants shown in the above sketch are in Longview, Washington. They produce one million eight hundred thousand feet of Douglas Fir lumber a day. The buildings cover seventy two acres. Six ocean going freighters can load at one time at the Long-Bell docks. The equipment of the plants include every modern device for producing good lumber economically."

Q. From reading Plaintiff's Exhibit B-1 and Plaintiff's Exhibit B-27 and from considering all the other data which was furnished to you, and which you have identified, where did you understand the plants of the Long Bell Lumber Company and the Weyerhaeuser Timber Company were located?

Mr. Johnston: Well, that is objected to. Reliance must be shown by acts and not by mental processes.

The Court: Objection overruled.

A. In the City of Longview, Washington.

I had no other information with respect to the physical location of the plants except that furnished to me in this data. I had never been to Longview, Washington, which is about two thousand miles from Des Moines, Iowa.

When I received the letter, Plaintiff's Exhibit B-24, from Mr. Frank Wood, I had the tabulation identified as Plaintiff's Exhibit B-25, given to me by Mr. Kelley. I observed therefrom that the original debt had been materially reduced through retirement and maturity. I knew that these Local Improvement District Bonds were not a funded debt, as it is commonly known.

In connection with this purchase of $100,000.00 of Local Improvement District Bonds in May, 1930, I gave consideration to the statements in Plaintiff's Exhibit B-24.

I bought other Longview Local Improvement District Bonds of Halsey, Stuart & Company during the year 1930, dealing with Mr. Kelley, and I have prepared a table from the records of our company showing the date of the consummation of such purchases by Halsey, Stuart & Company, the date of the receipt of the securities, the date of the entry on the journal, the Local Improvement Districts involved, and the amounts, which is identified as Plaintiff's Exhibit B-35.

Mr. Johnston: Does that show the exchanges where there were exchanges of L.I.D.'s for L.I.D.'s?

Mr. Gamble: Yes.

Mr. Johnston: They are indicated separately?

Mr. Gamble: No.

Mr. Johnston: I mean they are indicated that they were exchanged?

Mr. Gamble: No, not that they were exchanged.

Mr. Johnston: Oh, that's what I meant.

Mr. Howland: The dates of the transactions are shown.

The Witness: Of the $100,000.00 Longview Local Improvement District Bonds, $85,000.00 were confirmed to us by Halsey, Stuart & Company on May 17th and $15,000.00 on May 26th, 1930.

In addition to the exhibits already identified, Mr. Kelley also gave us the information prior to making the purchase that the Long-Bell Lumber Company was a very large, long-established company, doing business partly in the south and partly in the west.

Plaintiff's Exhibit B-34 shows that the current assets of the Long-Bell Lumber Corporation and subsidiaries as of December 31, 1929, were $15,831,000.00, while the current liabilities were $7,975,000.00, and prior to the purchase of these $100,000.00 of these bonds I gave consideration to those stated figures.

Q. Mr. Hubbell, prior to the purchase of this $100,000 of Longview, Washington, Local Improvement District bonds in May, 1930, did you know of the existence of the Cowlitz County Consolidated Diking District No. 1?

Mr. Johnston: That is objected to, as not being competent, relevant or material to any issue presented by the alleged misrepresentations of the complaint or—

The Court: The objection is overruled. He may answer.

A. No, sir, I did not know.

Mr. Gamble: Q. Did you at that time know that the lands and lots included within the City of Longview, Washington, were subjected to any assessment liens other than

for these Longview, Washington, Local Improvement bonds?

Mr. Johnston: The same objection.

The Court: The same ruling.

A. No, sir, I did not.

Mr. Gamble: Q. Now, I observe that, from the Plaintiff's Exhibit B-35, included in the $85,000 par value of these bonds which you say were confirmed to you by Halsey, Stuart on May 17, 1930, are $46,000 par value of District No. 19 bonds. What did you find out, if anything, about District 19?

A. Well—

Mr. Johnston: Now, just a moment. I don't think that is quite a proper question, what did he find out—you are talking about what period of time, and from whom?

Mr. Gamble: I am talking about prior to the purchase of this $85,000 of bonds.

Mr. Johnston: I think he should state with whom he had a conversation, if he had a conversation. I mean, it is very difficult for me to answer these things if he is traveling all over the map and not defining his source of information.

The Court: Well, I think that is a proper question. Go ahead, answer the question.

A. That District No. 19 comprised practically—was practically coextensive with the City of Longview. Mr. Kelley during our negotiations gave me that information.

That was prior to the time that we bought any of these Longview, Washington, Local Improvement District Bonds.

Prior to the purchase of any of these Longview Local Improvement District Bonds in 1930, I did not know that the Long-Bell Lumber Mills, the Weyerheuser Timber Plant, the Longview Fibre Company, or the plant of the Standard Oil Company, were located outside the city limits of Longview, nor did I know that the City of Longview in fact did not have seven and a quarter miles of frontage upon the Columbia River.

Before making the purchases, I gave consideration to the map on the last page of Plaintiff's Exhibit B-25.

I did know prior to making the purchases in May, 1930, that the Long-Bell Lumber Company had bank loans, as set forth in the balance sheet of January 1, 1930. I was supplied with no later information with respect to the financial condition of the Long-Bell Lumber Company.

Q. Did you know, prior to making the purchases of

any of these Longview, Washington, Local Improvement bonds, that the commercial banks who were loaning money to the Long-Bell Lumber Company were requesting it to strengthen its current position in so far as their loans were concerned, by transferring its liquid assets, or practically all of them, to a new formed corporation which should do the borrowing.

Mr. Johnston: That is objected to for two reasons. One, it is assuming as a fact something that is not established as a fact, and it is not in fact a fact; and second, that it is not competent or relevant to any of the issues presented in this case, because there are no alleged misrepresentations to which this would properly be directed. this evidence.

The Court: Do you contend there has been no evidence suggesting that fact situation?

Mr. Johnston: Certainly not at that time, your Honor. There has been none.

The Court: The objection is overruled.

Mr. Johnston: The question of the formation of the Sales Company was a matter that came out very, very much later.

A. No, sir, I did not.

I first learned that the Long-Bell Lumber Company and Weyerhaeuser Lumber Company Plants were outside the corporate city limits of Longview, Washington and that it did not have a water frontage of seven and a quarter miles on the Columbia River about the middle of 1931. I ascertained those facts in a report from James H. Windsor of our office.

Q. When did you first ascertain the fact that there were liens for assessments for Diking District Bonds on lots and lands within the City of Longview?

Mr. Johnston: That is objected to, as not material, competent or relevant, there being no alleged misrepresentation to which such evidence is properly directed.

The Court: The objection is overruled.

A. In 1931.

I ascertained that fact from a letter from Mr. Alex Hay, the tax agent of the Long-Bell Lumber Company, or one of its subsidiaries, in answer to our inquiries for information in regard to the payment of taxes or special assessments for the L.I.D. Bonds.

Q. Did you at that time, in 1931, ascertain the amount of the liens or assessments upon lands and lots in the City of Longview, Washington—

Mr. Johnston: That is objected to—pardon me.

Mr. Gamble: Q. (continuing)—on account of the Cowlitz County Consolidated Diking District No. 1?

Mr. Johnston: That is objected to, if the Court please, because on any theory that would be immaterial. If he had knowledge in 1931 as to the existence of the assessment district, and that taxes were levied upon those lands, the matter of ascertaining the amount was a matter of inquiry which could and should be made by him. He can't claim any advantage of the fact that he didn't make any inquiry after he received the information.

The Court: Objection overruled.

A. That is my recollection, we did.

Mr. Gamble: Q. Mr. Hubbell, prior to making the purchase of these bonds, Local Improvement District Bonds in May of 1930, did you know that the Long-Bell Lumber Corporation and subsidiary companies had sustained a loss of $385,409.01 in the four months ended April 30th, 1930?

Mr. Johnston: That is objected to, as not competent, material or relevant to any issue presented by the alleged misrepresentations counted on or set up in the declaration.

The Court: The objection is overruled.

A. No, sir.

Mr. Gamble: Q. Now, Mr. Hubbell, prior to the purchase of any of these—of these bonds, Local Improvement bonds in May, 1930, did you ascertain the quantity of lands and lots within the City of Longview which were owned by the Long-Bell Lumber Company or its subsidiaries?

Mr. Johnston: That is objected to, not going to any alleged misrepresentation which is set up in the complaint, or which can be properly relied upon in this case.

The Court: The objection is overruled. Answer the question.

A. No, sir.

Mr. Gamble: Q. Prior to the purchase of these bonds in May, 1930, were you informed of the fact that the Long-Bell Lumber Company was endeavoring to strengthen its corporate cash position by financing with bonds upon the Longview Daily News and upon timber anticipation certificates as pledges to notes?

Mr. Johnston: That is objected to as not competent, relevant or material, and not going to any misrepresentations upon which the plaintiff is entitled to rely in this case.

The Court: The objection is overruled. He may answer.

A. No, sir.

The letter identified as Plaintiff's Exhibit B-36 is an original letter from Halsey, Stuart & Company addressed to me in connection with the purchase of $15,000.00 par value of the Longview, Washington, Local Improvement District Bonds on May 26, 1930, being part of that $100,000.00 block.

I wrote the letter identified as Plaintiff's Exhibit B-37 dated May 24, 1930, addressed to Halsey, Stuart & Company, also covering the purchase of this $15,000.00 par value of bonds.

Plaintiff's Exhibit B-38, letter addressed to me by Halsey, Stuart & Company under date of May 26, 1930, also concerns this $15,000.00 L.I.D. purchase.

The consideration which we gave Halsey, Stuart & Company for that $100,000.00 par value of Longview Local Improvement District Bonds in May of 1930 was $100,000.00 of State of Louisiana Highway Bonds due in 1931.

Plaintiff's Exhibit B-39, letter dated May 19, 1930, from Halsey, Stuart & Company to the Equitable Life Insurance Company, has to do with the purchase of the $85,000.00 par value of Longview, Washington, Local Improvement Bonds.

We had further negotiations with Halsey, Stuart & Company in the year 1930 with respect to Longview, Washington, Local Improvement Bonds.

Plaintiff's Exhibit B-40, letter from Halsey, Stuart & Company, signed by Frank Wood, dated June 4, 1930, has to do with an offer to procure Longview, Washington, Local Improvement District Bonds for the Equitable Life Insurance Company on the market.

Plaintiff's Exhibit B-41 is the letter dated June 7, 1930, which I wrote in answer to Mr. Wood's letter of June 4, 1930.

Plaintiff's Exhibit B-42 is a letter dated August 9, 1930, addressed to me and signed by B. C. Kelley.

Mr. Gamble: Q. Now, Mr. Hubbell, between the dates in May, 1930, upon which you consummated the exchange of the $100,000.00 par value of Louisiana State Highway Bonds for the $100,000 par value of Longview Local Improvement District Bonds, were you furnished with any additional information by Halsey, Stuart & Co., other than that contained in the letter of June 4th, 1930, which has been identified as Plaintiff's Exhibit B-40, concern-

ing either the City of Longview, the Cowlitz County Consolidated Diking District, the Longview Local Improvement District Bonds, or the condition of the Long-Bell Lumber Company?

Mr. Johnston: Objected to on the ground no duty rested upon Halsey, Stuart & Co. to furnish any additional information, under the Iowa law.

The Court: Overruled.

The Witness: No, sir.

Mr. Gamble: Q. Did you know at the time of the receipt of the letter of August 9th, 1930, identified as Plaintiff's Exhibit B-42, that Long-Bell Lumber Corporation and subsidiaries had sustained a net loss for the five months ended May 31, 1930, of $474,230?

Mr. Johnston: That is objected to for the reasons just stated.

The Court: Objection overruled.

The Witness: No, sir.

Plaintiff's Exhibit B-43 is a letter dated August 19, 1930, addressed to the President of the Equitable Life Insurance Company from B. C. Kelley, which came from our regular files. In that letter it is stated: "In accordance with our telephone conversation yesterday we are holding under option $15,000 Longview, Washington, sixes for your consideration on Tuesday of next week. Our offering price is one hundred less one-quarter discount, to yield slightly better than six per cent."

Those bonds were purchased for cash by the Equitable Life Insurance Company at 100 less one-quarter discount. The bonds referred to in Exhibit B-43, being $10,000.00 Longview, Washington, 6s, were purchased for cash at par less one-quarter.

Q. Now, let me ask you just this question: Was there any additional data or information with respect to either the City of Longview, the Cowlitz County Consolidated Diking District No. 1, the Longview Local Assessment District Bonds, the location of the mills of the Weyerhauser Timber Company, the Long-Bell Lumber Company near Longview, or the condition of the Long-Bell Lumber Company, conveyed or given to you except that which you have heretofore detailed prior to your action upon the purchase of the bonds in connection with the offer of August 19, 1930, Plaintiff's Exhibit B-43?

Mr. Johnston: The same objections for the same reasons heretofore given to the Court.

The Court: The same ruling.

The Witness: No, sir.

Referring to my memorandum, I note we confirmed twenty-six bonds,—two on August 19th, one on August 12th, another on August 12th, five on August 19th, five on September 26th, three more on August 19th, and again nine on August 12th.

Plaintiff's Exhibit B-44 headed "Chicago office, September 25, 1930," addressed to Mr. B. C. Kelley, Chicago office and initialed "H.H.S.", bears my initials, as I received it from Mr. Kelley, and refers to undelivered Longview Bonds which Halsey, Stuart & Company is carrying on a "will advise ticket." This explains why on my memorandum of confirmation of some of the bonds purchased in August is stated as September 26, 1930, since Halsey, Stuart & Company held those bonds until a later date, but we ultimately paid for them.

Q. Now, were you furnished with any additional data other than that which you have detailed concerning either the City of Longview, the Cowlitz County Consolidated Diking District No. 1, the Longview Local Improvement District Bonds, the location of the mills of the Weyerhauser Timber Company, the Long-Bell Lumber Company, the Longview Fibre Company, the financial condition of the Long-Bell Lumber Company prior to September 26th, 1930?

Mr. Johnston: The same objection previously stated.

The Court: The same ruling.

The Witness: No, sir.

Mr. Gamble: Q. Or on that date?

A. No, sir.

Mr. Johnston: The same objection.

The Court: The same ruling.

There was an agreement between Halsey, Stuart and my firm that the $100,000.00 Louisiana State Highway Bonds should be taken in on a 4½% yield basis. The bonds had a 5% coupon rate, so the value of the bonds would be about par, or 100.

The letter, Plaintiff's Exhibit B-39, from Halsey, Stuart & Company dated May 19, 1930, concerning this transaction, assigns to the first $85,000.00 Louisiana State Highway Bonds transmitted to them in connection with the transaction the value of $86,258.94, which includes accrued interest.

An offer was made to us on September 25, 1930, of $5,000.00 Longview 6s, District No. 11, one hundred per cent, at $100 less one-quarter. We agreed to purchase those bonds and they were confirmed, according to my memorandum, on September 26th.

The next transaction we had with respect to these Longview, Washington, Local Improvement District Bonds was on October 7th and 8th when Halsey, Stuart & Company confirmed to us the sale of $9,000.00 of these bonds.

Q. Now, let me ask you, if either prior to or on October 7th or 8th you had been furnished any further information or data concerning either the City of Longview, Cowlitz County Consolidated Diking District No. 1, Longview, Washington, Local Improvement District Bonds, Long-Bell Lumber Company Mills, or Weyerhauser Timber Company plants, or Longview Fibre Company plants, or the financial condition of the Long-Bell Lumber Company, other than that which you have detailed here previously in your testimony?

Mr. Johnston: The same objection, for the reasons previously stated.

The Court: The same ruling.

The Witness: No, sir.

Those bonds were purchased at par less one-quarter.

Prior to the purchase of the bonds in August, September and October, neither my company nor myself made any independent investigation of the Longview Local Improvement District, the Cowlitz Consolidated Diking District No. 1, the Long-Bell Lumber Company, or the City of Longview, nor did I have any information with respect to those subjects other than that which I have already detailed.

Q. Did you believe the statements contained in the data furnished you by Halsey, Stuart & Co.?

Mr. Johnston: That is objected to.

The Court: What is the objection?

Mr. Johnston: The belief of a person is not to be proved by his verbal statement, but by acts and conduct on the part of the corporation and the officers of the corporation which he represented.

The Court: That is a good objection, isn't it?

Mr. Johnston: The courts say reliance should be shown by acts, not by words.

Mr. Gamble: I will put it another way:

Q. Did any facts come to your attention which would lead you, prior to those dates, to disbelieve the information and statements which were furnished to you and made to you by Halsey, Stuart & Co., or their representatives concerning those subjects?

Mr. Johnston: That is objected to.

The Court: Objection overruled.

The Witness: No, sir.

We paid cash for the bonds which were confirmed to us on October 7th and 8th, 1930.

Plaintiff's Exhibit B-45 is a customer's confirmation of the purchase of $200,000.00 Local Improvement District No. 11, Longview, Washington, 6% Bonds issued by Halsey, Stuart & Company bearing date August 16, 1930, and the name of the salesman as Kelley.

In October of 1930, we purchased from Halsey, Stuart & Company $200,000.00 of these Longview Local Improvement District Bonds and sold them $200,000.00 Chicago Tax Anticipation Warrants.

Plaintiff's Exhibit B-46 is a customer's statement dated October 16, 1930, issued by Halsey, Stuart & Company showing the purchase by them of $200,000.00 tax anticipation warrants of the City of Chicago, 6%, at par, plus three-eighths.

This price of one hundred and three-eighths was the price agreed upon between Halsey, Stuart & Company and my company.

In connection with this exchange of the $200,000.00 Tax Anticipation Warrants for a like amount of Longview Local Improvement District No. 11 Bonds, we dealt with Mr. Kelley.

Q. Now, did you, prior to or on October 16th, 1930, the date of the customer's confirmation, Plaintiff's Exhibit B-45, receive any other or further information or data with respect to either the city of Longview, Washington, Cowlitz County Diking District No. 1, Longview, Washington, Local Improvement District, and particularly District No. 11, the location of the plants of the Weyerhauser Timber Company, the Long-Bell Lumber Company, and the Longview Fibre Company, near Longview, or the financial condition of the Long-Bell Lumber Company?

Mr. Johnston: Objected to for the reasons previously stated to a similar question.

Mr. Gamble: Just a minute; I had not quite finished.

Mr. Johnston: I thought you were through. I am sorry.

Mr. Gamble: (continuing.) Q. Other than the date which you have detailed in your testimony previously?

Mr. Johnston: The same objection.

The Court: The same ruling.

Mr. Johnston: On the grounds previously stated.

The Witness: No, sir.

The City of Chicago Tax Anticipation Warrants had no specified maturity, but were payable from taxes for the year 1929 in numerical order of their issuance.

The next transaction with respect to the Longview, Washington, Local Improvement District Bonds was on October 28, 1930, when they confirmed to us $2,000.00 of District No. 11 at the same prices as the others. We paid for those bonds in cash except where we exchanged some Local Improvement District Bonds, which although they bore the same rate of interest, had very short maturities.

The Louisiana State Highway Bonds matured in March, 1931, and had, at the time of our exchange with Halsey, Stuart & Company, a maturity of less than a year.

I had transactions with Halsey, Stuart & Company with respect to these bonds on or about February 26, 1931, and the letter Plaintiff's Exhibit B-47 relates to that transaction.

On February 26, 1931, we purchased from Halsey, Stuart & Company $3,000.00 City of Longview Local Improvement District 6% Bonds, selling them $2,000.00 par value of the same bonds, and paying cash for the difference.

So far as the $2,000.00 goes, it involved transactions similar to the exchanges which I have been testifying about heretofore. The only exchanges of securities, other than for these same Longview, Washington, Local Improvement District Bonds, were the two transactions I have testified about, one involving the State of Louisiana Highway Bonds and the other involving the Chicago Tax Anticipation Warrants.

Q. Now, let me ask you whether prior to the consummation of the transactions on October 28th, 1930, which were confirmed to you on October 28th, 1930, January 30th, 1931, and February 26th, 1931, whether those transactions constituted purchases for cash or exchanges of Longview, Washington, Local Improvement District Bonds for the same improvement bonds, you were furnished any other or further information or data than that which you have already detailed in your testimony respecting either the City of Longview, Cowlitz County Consolidated Diking District No. 1, Longview Local Improvement District Bonds, the location of the plants of Weyerhauser Timber Company, Long-Bell Lumber Company, and Longview Fibre Company near the City of Longview, or the financial condition of the Long-Bell Lumber Company?

A. No, sir.

Mr. Johnston: Just a moment. I was not sure whether

you were through or not. I want to interpose the same objection.

The Court: The record may show you made the same objection and the same ruling will be noted.

During the year 1931, I received the balance sheet of Long-Bell and its subsidiaries as of December 31, 1930, and also in that year caused an investigation of the City of Longview and the Longview Local Improvement Districts to be made by Mr. James H. Windsor, who was in the employ of the Equitable Life Insurance Company starting some time in 1931. He was not employed in 1930. As the result of his investigation I discovered that the plants of the Long-Bell Lumber Company and the Weyerhauser Timber Company were not within the corporate limits of the City of Longview and they did not have seven and a quarter miles or any substantial frontage upon the Columbia River.

Mr. Windsor made his investigation in June of 1931.

I first learned that there were assessments upon the lots and lands within the City of Longview on account of the obligations of the Cowlitz County Consolidated Diking District No. 1 during August, 1931.

Mr. Windsor did not make the trip especially to investigate Longview and the Longview, Washington, Local Improvement District Bonds, for our company owned other securities secured by property on the west coast.

Interest on the Longview, Washington, Local Improvement Bonds was paid at the rate specified therein during the years 1930 and 1931. During the year 1932, I received a copy of a communication from Mr. R. A. Long to the First Mortgage bondholders of the Long-Bell Lumber Company.

I know Mr. Clarence T. MacNeille, who is Vice-President, and I don't think I could give his exact title, of Halsey, Stuart & Company. I first made his acquaintance in the summer of 1933, and had conversations with him in reference to the Longview, Washington, Local Improvement District Bonds and the Long-Bell Lumber Company. He made me a visit during the year 1933. Mr. MacNeille was chairman of the Bondholders Committee representing the mortgage bonds of the Long-Bell Lumber Company.

The company was in difficulties, and Mr. MacNeille was contacting the various creditors of the Long-Bell Lumber Company, and inasmuch as we represented the largest amount of L.I.D. bonds held by any individual he called on me to see if something could be worked out to protect our investment and also to help the Lumber Company. I

had subsequent meetings with him, and certain proposals were made at the first or later meetings. No persons purporting to represent the Cowlitz County Diking District Bonds were present, I believe, with me and Mr. MacNeille.

I went to Longview, Washington, in the summer of 1934, at the request of Mr. MacNeille and Mr. Andrews, the attorney for the Long-Bell Lumber Company, and the three of us were trying to work out some solution for the Longview Local Improvement District Bond situation. There were representatives of the holders of the Cowlitz County Diking District Bonds present in Longview at that time.

We discussed a great many proposals or variations of the same type of proposal at various times. I think it was in June, 1934. We reached no solution while we were in Longview of the problem.

I rode around the City of Longview and observed the character of the property within the corporate limits of the City.

I don't think I had any further negotiations with Mr. MacNeille concerning the possibility of a solution of the Longview Local Improvement District Bond situation after my trip to Longview with him in 1934.

Plaintiff's Exhibit B-48 is the communication I referred to a while ago from Mr. R. A. Long to the bondholders of the Long-Bell Lumber Company. This document states:

"Believing that it is in the interest of the bondholders so to do, we have suggested to Halsey, Stuart & Company, who headed the syndicate which distributed the bonds, that a Bondholders' Committee be formed to obtain deposits of the bonds, and provide in this way concerted and constructive action on the part of the bondholders in meeting the problem before them, cooperating with the company as far as possible."

It was after the receipt of this document that I had my conferences with Mr. MacNeille which I have detailed. The letter went out in 1932 and the conferences occurred about a year and a half later, in 1933.

The full level premium reserve for all policies in the Equitable Life Insurance Company of Iowa on January 1, 1930, was $91,640,000.00; then there was a reserve for dividends payable in 1930 to policyholders of $4,241,000.00; there were policyholders' dividends and interest, and advance premiums of $5,622,000.00. Other liabilities were taxes payable in 1930 of $594,000.00, miscellaneous liabilities of $274,000.00, making total liabilities, other than capital stock and surplus, of $102,370.00.

To my recollection, interest on the Longview, Washington, Local Improvement Bonds was paid in the first part of the year 1931, but not in the latter part of the year. We have received interest on the L.I.D. Bonds since that time, and have prepared a statement of the aggregate amount of interest received on the L.I.D. Bonds which we have owned and which we have purchased from Halsey, Stuart & Company.

Plaintiff's Exhibit B-49 is that statement showing an aggregate amount of $130,337.34, including all the bonds originally received whether they have been retired or not.

The L.I.D. Bonds which we purchased from Halsey, Stuart & Company and which the Equitable Lfe Insurance Company still owns, measured by par value, amount to $266,000.00.

We never bought L.I.D. Bonds from anybody but Halsey, Stuart & Company. We purchased $353,000.00 in par value of these L.I.D. Bonds, and the balance have been paid by the various Districts which issued them by the assessments levied.

Cross-Examination by Mr. F. W. Hubbell by Mr. Johnston.

I have been with the Equitable Life Insurance Company of Iowa for twenty-five years. It is a stock company, and I am a stockholder in it. I became active in the purchase of securities for the company approximately twenty years ago.

Up until 1928, we were engaged principally in the purchase of first mortgages on farms, and while we had had a few municipals for the past twenty-five years, very few to begin with, I would say that along about 1922 we commenced to enlarge our municipal investment account. At that time I was Vice-President and Treasurer of the company. The offerings came to me and I would take them to our Finance Committee with my recommendation. All securities that are purchased by the Equitable Life Insurance Company are passed upon by the Finance Committee ultimately, and until that Committee passes upon them they are not formally purchased or acquired by the Equitable.

In 1930 that Finance Committee consisted of Mr. F. C. Hubbell, Mr. Griff Johnson, Mr. H. S. Nollen, Mr. J. W. Hubbell and myself.

The investigation that we would make of the securities during the years prior to 1930 and in that year would depend upon the security and how it was represented to us and by whom. During that period, and particularly in

1930, we were buying the majority of our municipals at 5%, and a very few at 6%,—between 5% and 5½%. The highest grade municipal securities were in the neighborhood of 4½%.

Q. Somewhere between three and a half and four and a half, weren't they, the highest grade municipals?

A. I just don't know whether they were down as low as three and a half or not, Mr. Johnston.

We bought from a number of investment houses in 1930. My recollection is that it was at least fifteen.

We maintained no statistical department, no department that made investigation into the securities which we purchased, nor experts on municipal bonds.

We took Moody's Government service in municipals, which covers a large proportion of all types of municipal bonds. The term "municipal" refers to bonds of cities, counties, school districts, irrigation districts, improvement districts, etc., regardless of whether it is a city, county or school district. That is the way the term is usually used in the investment business.

We took Moody's and Poor's listed investments by life insurance companies in 1930. That is all that I can recall. I always consulted Moody's when any offering of municipal bonds was made, but I very seldom considered Poor's

Slightly over 10% of our bond list was in the improvement or assessment bonds scattered throughout the United States.

Defendant's Exhibit 1 contains the list of the bonds which the Equitable Life Insurance Company of Iowa was holding as at the close of business on December 31, 1930, divided roughly into governments, states, counties, municipals and public utility bonds. Public utility bonds had not been available for the investment of funds of Iowa life insurance companies until the passage of the Act in 1927 and therefore we had not acquired a very long list of public utility bonds in 1930.

Looking through this list, Defendant's Exhibit 1, the bonds which have the words "improvements", "street improvements", "storm sewer", "water works", "assessment certificates" and similar designations after them, are not all bonds payable by assessments of some type through taxes, but a great many of them are. The par value is shown on this list, and a majority of them had a 6% coupon in the list of the municipals.

It was not my practice up to and including 1930 in making purchases of municipals of any kind to ascertain in advance of the purchase the overlapping municipal dis-

tricts which were involved. In other words, I made no investigation to determine when buying a waterworks bond in the town of "X" to discover how many city bonds were outstanding in that town or how many school bonds or county bonds. That was the practice which developed out of the depression after 1932 or 1933.

Mr. Kelley's office was located in the building of our company in 1930. We were on the 18th or top floor of that building.

I think Mr. Kelley came to Des Moines as the representative of Halsey, Stuart & Company around 1928. Prior to his coming it is possible that Equitable Life Insurance Company had made some purchases from Halsey, Stuart & Company, but not very extensive ones. After he came to Des Moines he made frequent calls on me with reference to offerings of securities put out by Halsey, Stuart & Company and offering me bonds that they had for sale on their list of securities offered.

After the amendment of the Iowa law he offered me public utility bonds which had then become, if of the proper classification and asset position, available for purchase by insurance companies. I bought some utility bonds through Mr. Kelley from Halsey, Stuart & Company and also some of these various types of municipals.

Up to May in 1930, in round figures Equitable had purchased from Halsey, Stuart & Company municipal bonds of over $1,000,000.00 and also over $1,000,000.00 of public utility bonds.

It is my recollection that Mr. Kelley called on me sometime about the first of May, 1930, suggesting a purchase or trade of Longview Local Improvement District Bonds. Up to that time we had never been offered these bonds by Halsey, Stuart & Company or anyone else. Mr. Kelley had with him at the time of his initial contact the circular describing the bonds, which is Plaintiff's Exhibit B-1. He may have told me at the time that these were bonds which Halsey, Stuart & Company had accumulated in trading operations in buying and selling the bonds. I don't recall that he had with him his sales sheet, although I have seen them. I knew that the particular group of Longview, Washington, Local Improvement Bonds had been put out in 1927, and that this was an offering circular put out at that time in connection with the original distribution of the bonds by Halsey, Stuart & Company. In fact, Mr. Kelley told me that.

I asked Mr. Kelley for more information, after looking at this circular, on the City of Longview, what the property

was out there, and about the Long-Bell Lumber Company.

Where I was buying assessment bonds, which I had been doing for many years prior to 1930, I got very meager information from the various dealers. The circular or information on municipal bonds of that kind, whether printed or typewritten, generally gave the assessed valuation of the lands in the district and a description of them, but not always the tax rate.

After this initial contact from time to time Mr. Kelley brought in additional information until about the middle of the month. I don't recall that all the literature, with the exception of the balance sheet of the Long-Bell Lumber Company which I have produced here, was in a brown envelope or folder given to me by Mr. Kelley at one time, nor do I have any recollection of turning back to Mr. Kelley any documents which he turned over to me for examination in connection with this offering of bonds.

The Equitable Life Insurance Company of Iowa had a general counsel, who was directly connected with the Equitable, but did not devote his entire time to the business. He had his office in the Equitable Building but not in the general offices of the Equitable. It was not our practice to turn over to him any of the data or offering s.

I don't think I asked Mr. Kelley during any of these negotiations anything about the Washington law.

The document which has been marked Defendant's Exhibit 2, being a digest of the Washington law, I do not think was handed to me by Mr. Kelley pursuant to my request prior to the purchase of these bonds. I think I got it from Halsey, Stuart & Company after Mr. Windsor's trip to Longview in 1931.

Q. Are you very sure of that, Mr. Hubbell?

A. I am almost positive.

I read all of Plaintiff's Exhibit B-1, and I note that the information contained therein was based upon information which Halsey, Stuart & Company itself had received and relied upon, as is stated, in the purchase of those bonds. I don't think I asked Mr. Kelley from what source that information had been obtained.

I knew that it was the practice, and of necessity so, of investment houses in securing information regarding the properties of a company upon which the securities were being issued to secure that information from the issuing company.

I read all of the literature, printed or typewritten, being Plaintiff's Exhibits B-23, B-30, B-32, B-31, B-34, B-33, B-27, B-29, B-28, B-26 and B-25. When counsel called my atten-

tion to two or three paragraphs in one of those documents and asked if I had read them I did not mean in answering to imply that I had not read the rest of the printed and typewritten matter contained in the other documents just enumerated. I knew from reading those documents before the purchase of any of these bonds that the City of Longview had been founded by the Long-Bell Lumber Company a few years prior to 1930; that the site of the city had been a valley of farms and orchards, as they say, prior to the time the Long-Bell Lumber Company came in and laid out the city. I knew that the city had been planned as a development prior to the building of a single building by what the literature refers to as "expert city planners". I knew that in 1930 the city of Longview had not been in existence for more than six or seven years, and I knew that the Long-Bell Lumber Company having built the city originally, either through itself or subsidiaries, owned a large part of the land. I think it would be the natural conclusion that when they laid out the city and turned it from farm land into a city that it would originally start out as Long-Bell, or Long-Bell subsidiary, property.

I knew particularly from looking at Exhibit B-25 that at the time the circular was put out, some years after the founding of the city, it was still spread out over a considerable amount of territory, and noted the pictures on page 1 in the circular and on the next to the last page showing a developed subdivision, and then across Lake Sacajawea a great deal of vacant property, a subdivision that has relatively few buildings on it. I knew that, at least when the circular was put out some years after the City of Longview was started, that there was some vacant land.

Q. Well, you knew there was a great deal, didn't you, from looking at these pictures?

A. Well, I think those pictures show just as little vacant land as possible, Mr. Johnston.

Q. Well, that is not the question. They show plenty of vacant land, don't they?

A. They show some vacant land, yes, sir.

I knew where the City of Longview was located, at the point in the valley where the Cowlitz and the Columbia Rivers come together. That was clearly disclosed both from the descriptive matter and from the map on the back of Exhibit B-25.

I knew from the statements contained in Exhibit B-25 the extent of the paved streets, the graded and gravelled streets, the macadam, sidewalks, the water mains, miles of sanitary sewers, etc.; they were all set forth in the cir-

cular, and indicated a pretty extensive street improvement, water main and sewers.

Plaintiff's Exhibits B-27 and B-29, I knew to be copies of ads which had been run in the Saturday Evening Post by the Long-Bell Lumber Company or the Longview Company. I think there is no question about that. I knew that the statements contained in the advertisements in the Saturday Evening Post were made by the Long-Bell Lumber Company or by one of its subsidiaries, and knew that it was an advertisement of the Long-Bell Lumber Company run by them in the Saturday Evening Post. This is true of both Exhibits B-27 and B-29.

I knew that Plaintiff's Exhibit B-28 was a circular put out by the Longview Chamber of Commerce, Longview, Washington, and I knew that from the series of photographs on page 12 there was some undeveloped property in the City of Longview on which no buildings of any kind had been erected, and from the photographs I got an idea of the type of the improvements in the different sections where there were improvements; in some cases, very small cottages, workmen's cottages, and in other houses of more pretense and size.

I looked over Plaintiff's Exhibit B-34 carefully, being the balance sheet, reading it pretty carefully.

Q. You said on direct examination, Mr. Hubbell—you were asked this question—well, I think I can quote it from memory, without finding it.

You were asked by your counsel: Did you know of the existence of the Diking District Number 1 prior to the time that you purchased any of these bonds, and your answer was "no". That is not correct, Mr. Hubbell, is it?

A. That is not exactly correct, no, sir.

Q. You read this balance sheet, including the letter of Ernst & Ernst, accountants, which forms a part of it? I am now referring to Plaintiff's Exhibit B-34. Did you not?

A. Yes, sir.

Q. And I will ask you whether or not you did not read and consider at that time these sentences appearing on page 9 of the printed letter of Ernst & Ernst which accompanied the consolidated balance sheet as of December 31, 1930:

"Bonds aggregating $4,607,000 guaranteed by the Long-Bell Lumber Company consist of bonds of the amount of $2,554,000 issued by the Consolidated Diking District Number 1, organized under the laws of the State of Washington, and bonds amounting to $2,053,000 issued by Local Improvement Districts of the city of Longview, Washington.

The Diking District Bonds were issued to take up warrants, together with interest thereon, which had been issued to the Long-Bell Lumber Company in payment for construction work performed. Bonds of Local Improvement Districts of the city of Longview were issued for expenditures made for various local improvements in the city of Longview. The Diking District bonds mature serially over a period of twelve years, and the Local Improvement District bonds over a period of nine years. Assessments payable in installments have been made by the Diking and Improvement Districts against the land comprised in the respective districts, as a means of providing funds for the payment of bonds as they mature, together with interest thereon. The proportion of such assessments against land of the Long-Bell Lumber Company and subsidiaries is set up on the books as it accrues, and the stated liabilities of December 31, 1929, include accrued assessments amounting to $446,596.05."

Now, you read those two statements, of course?

A. Yes, sir.

Q. In that letter of Ernst & Ernst?

A. Yes, sir.

Q. You knew then there was a Consolidated Diking District Number 1?

A. Yes, sir.

I knew that the Long-Bell Lumber Company had guaranteed the bonds of the Diking District as well as the bonds of the L.I.D. Districts, and that it had constructed the diking district because the bonds were issued to it in exchange for warrants representing the cost of the construction.

I knew that the City of Longview was located at the confluence of the Cowlitz and Columbia Rivers in that valley, but I made no inquiry from anybody as to where those dikes were located.

Q. And having knowledge of the fact that the Long-Bell Lumber Company had constructed a diking system at a cost of several millions of dollars which they had guarteed the payment of, where did you think that Diking District was located?

A. I had no knowledge, I just knew it was in Cowlitz County.

Q. You did not take account of the fact that if there was going to be a dike it would naturally be along the rivers, did you?

A. I did not give it any consideration.

Q. Did not give it any consideration?

A. No, sir.

Q. Nor did you ask Mr. Kelley, after reading these statements and after seeing that those bonds were likewise guaranteed by the Long-Bell Lumber Company, so shown upon the balance sheet, and so reflected by the statement of Ernst & Ernst, you did not ask Mr. Kelley, or anybody else, "Well, where is this Diking District where it has its bonds guaranteed by the Long-Bell Lumber Company and the assessments?

A. No, sir.

Q. That question never arose in your mind?

A. No, sir.

Plaintiff's Exhibit B-23 was apparently received by Mr. Kelley from his home office and turned over to me.

The figures in the righthand column indicate in what districts Halsey, Stuart & Company had bonds for sale and the number that were so available. Where "none" appears, it means they did not have any of them. That was put there by Mr. Kelley about the time he turned this exhibit over to me.

I knew from this statement the amount of the original issue, which had been $3,149,000.00, and that there had been collected to date $1,136,000.00, or something a little over one-third of the bonds that had been called and paid.

I knew of the practice of large companies of issuing audited balance sheets and audited statements at the close of the fiscal year, and I knew that this was such a statement as at the close of the fiscal year, December 31, 1929, or January 1, 1930.

During the period between May 1, 1930, and May 17, 1930, which was the date the Finance Committee approved the purchase of $85,000 or $100,000 of these bonds, Mr. Kelley gave me any information I asked for and, as a matter of fact, that continued to be so not only prior to the purchase of these bonds but prior to the purchase of any subsequent L.I.D. Bonds, and prior and subsequent to the purchase of all bonds. In other words, Halsey, Stuart & Company may not always have had the information, but they did obtain it either from Mr. Hay or others and forwarded it to me in due course as soon as they got it.

Referring to Mr. Wood's letter to me under date of May 14th, 1930, and the statement, "We believe you have before you practically all the data covering this issue of bonds", at that time I had before me the printed and typewritten matter which I have produced here. I don't think we had anything else at that time.

Q. You did not have anything else at that time. Then you knew that what Mr. Wood was referring to was the

data that had been submitted to you from time to time, did you not?'

A. (No response.)

Q. You knew Mr. Wood, when he said, "We believe you have all the data before you", was referring to this information which had been furnished you either by Mr. Kelley verbally, or the printed matter that had been supplied to you?

A. I presume so.

I knew that these Local Improvement District Bonds were not funded debt of the City of Longview, in connection with the second paragraph of the letter from Mr. Wood.

I knew that there were approximately twenty districts, the numbers being shown on Plaintiff's Exhibit B-23, and I knew that each one of these districts was separate, covering an area in the City of Longview, some of it very small and some of them larger. Mr. Kelley told me that District No. 19 was practically contiguous with the City of Longview, so that many of these districts overlapped each other.

I knew that some of these properties in Longview might well be in three or four districts and that the districts were organized for all the different types of improvements that are made in a city.

A funded obligation of a municipality is an obligation paid by unlimited or by general ad valorem taxes of the city, and likewise a direct obligation of the city or municipality or district as distinguished from something as, for instance, the Chicago Tax Anticipation Warrants; they were not funded obligations of the City of Chicago; they were not obligations of the City of Chicago at all, except to distribute properly the taxes that were collected. I knew those facts when I received the letter of May 14th, 1930.

Referring to Plaintiff's Exhibit B-36, a letter of May 25th from Holden Smith of Halsey, Stuart & Company, stating that they have now obtained the additional $15,000.00 to complete the original $100,000.00, I knew at the time that Mr. Kelley first presented these bonds to me that all Halsey, Stuart & Company had acquired was $85,000.00 shown on the list. I presume he told me at that time that they would acquire in the market enough more to make an even $100,000.00. It was pursuant to that that the additional $15,000.00 came along.

The statement, "It is entirely satisfactory for you to consummate the exchange of these bonds in the same manner as was done with the $85,000", in my letter, Plaintiff's

Exhibit 37, shows that I regarded the transaction, when I wrote the letter, as an exchange of $100,000 L.I.D.s for $100,000 Louisiana States. The Louisianas were 5% bonds and the Longview's were 6%.

It is not our general practice, where an issue is shortly to mature, to trade the issue for another when we desire to reinvest the funds. It all depends on the circumstances. I would not say that we have done it frequently; we have done it; I would have to check the records; it all depends on the circumstances. We have done it before and have done it since.

Because these Louisiana State Highways were shortly maturing bonds, which would require reinvestment upon their maturity, if paid, that we used them to trade for the L.I.D.s. If the Louisiana's had had a longer maturity, say five or six years, we would stay with the investment and the chances are we would have had no interest in trading them because we already had the funds invested in Louisiana State's for a reasonable period of time.

As far as the purchases made subsequent to the 17th of May and prior to the October purchase, I do not recall any additional information which I requested from Halsey, Stuart & Company or any additional statements made to me by Mr. Kelley, though I saw him very often and cannot recall what he said to me each time. As a matter of fact, I saw Mr. Kelley on an average of several times a week ordinarily, and that situation continued for a number of years until he left Des Moines, I think in 1933 or in the early part of 1934. Up until that time he continued to call with offerings of municipal and public utility bonds. I think that after 1931 he called on Mr. Windsor and then in 1932 on Mr. Windsor and Mr. Keller, but he unquestionably saw me. He called on the Equitable during that time. At that time Mr. Windsor was taking the first look at these securities, so he would naturally contact Mr. Windsor first and then possibly both of us.

Referring to Plaintiff's Exhibit B-40, in which Mr. Wood says to me in his letter of June 4th, "We will be glad to undertake the purchase of $100,000 additional bonds of this issue as it is possible to pick them up in the market", I understood that Halsey, Stuart & Company was merely acquiring these bonds in their ordinary trading operations as they picked them up in the market. I was told by Mr. Kelley at the first interview that they had only $85,000.00 of these bonds and that they thought they could pick up or acquire the $15,000.00 necessary to make up $100,000.00. Then I was told by Mr. Wood in June that he believed

that Halsey, Stuart & Company could acquire an additional $100,000.00 as it was possible to pick them up on the market. They gave me the information that Halsey, Stuart & Company were buying these bonds as they picked them up on the market in their trading operations.

I would presume from the letter that this was not the original issue of the bonds, or any part thereof, that was left from the original issue way back in 1927.

The letter also called my attention to the fact that there were rumors that the Long-Bell Lumber Company was going to sell the Longview, Portland & Northern to the three trunk lines and that Mr. Wood regarded it, to use the market term, as a very bullish factor in connection with Longview and the obligations of the district.

I was also advised by the letter that the Long-Bell Lumber Company had undertaken the retirement of a substantial amount of their first mortgage bonds from funds becoming available from the sale of capital assets not necessary to the successful operation of the Company. I made no inquiry as to what assets not necessary in the operation of the business were sold, but I did have the information that a substantial number of those bonds were being acquired as the result of such sales.

In the letter of June 7th, Plaintiff's Exhibit B-41, I told Mr. Wood we were not interested in any further bonds at that time. I had taken the matter up with the Finance Committee, for while sometimes such offering would not even go to the Finance Committee, because we had already bought some of the bonds I took it before the Committee.

I could say that I was not interested without ever taking it up with the Finance Committee, but in every case the purchase would go before it.

The memorandum addressed to Mr. Kelley dated September 25, 1930, was an original memorandum, apparently coming from the Chicago office to him which he turned over to me. Certain bonds aggregating $6,000.00 had been called for payment by one of the districts.

Q. Now, what was this provision for a "will advise ticket" for the Equitable.

A. It is my understanding that Halsey, Stuart & Company would endeavor to secure some bonds to replace them, would advise us when they had them, or if we ordered the bonds which they did not have they would advise us when they did have them.

Q. In other words, that was merely, that "will advise" arrangement, was merely one whereby Halsey,

Stuart & Company would advise you when they had acquired the bonds for the purpose of carrying out a sale?

A. Yes, sir.

These bonds in District No. 2, due 9/25/37, Nos. 107 to 110, were 50% bonds; meaning that they were in the first 50% of the issue to be retired as they were called. The description of these bonds as 50, 60, 70, 80, 90 or 100% bonds was based upon the ability of the districts to follow out the practice of retiring one-tenth of the issue each year from the taxes collected, and thus the bonds of the given numbers would fall into those percentage brackets.

Although I referred on Saturday to the fact that in making these exchanges I exchanged L.I.D.s of an earlier maturity for bonds of a later maturity, as a matter of fact all of the L.I.D. bonds of each district matured on exactly the same date. As a matter of fact, in the letter about which I was speaking at that time, being Plaintiff's Exhibit B-47, as well as Plaintiff's Exhibit B-45 and B-46, I was told what percentage these various bonds fell into, although as a matter of fact with respect to the exchange referred to in Plaintiff's Exhibits B-47 the bonds which I received in exchange from Halsey, Stuart & Company for the particular L.I.D. Bonds were in the 80% bracket whereas the bonds I turned over were in the 90% bracket. So as a matter of fact, it was just the reverse of what I stated the other day; at least in that transaction. Assuming that by maturity you mean the likelihood of being called, then the bonds which Halsey, Stuart & Company gave me in exchange, being in the 80% bracket, were therefore likely to be called before the bonds which I turned over, which were in the 90% bracket.

I unquestionably talked with Mr. Kelley in addition to what I have already said, before the purchase of the District 11 Bonds confirmed on October 16, 1930. I saw him several times a week. I don't recall asking for any information regarding that issue.

Q. For the purpose of refreshing your collection, let me ask you if, shortly prior to the consummation of that purchase, you did not ask Mr. Kelley to find out whether District 11 was co-extensive with the City of Longview?

A. Well, if he had not told me I probably did, because I knew it was co-extensive.

Q. I will ask you whether you did not ask him to find out whether the Long-Bell plant was located in the City of Longview?

A. I can not recall that, sir.

Q. You feel very sure that you did not?

A. To the best of my knowledge.

Q. I will ask you whether you did not ask him at the same time to find out who owned the utilities in Longview, the gas, water and electricity, whether they were owned privately or whether they were municipally owned?

A. I don't remember anything about it.

Q. You don't have any recollection of that?

A. No, sir.

Mr. Kelley always furnished me with the information for which I asked him. If it was not complete, I would ask him to get additional information. I think he endeavored to get me what I asked for and I don't recall anything which I asked him to get for me in the way of information either from his office, from Longview, or the Long-Bell Lumber Company which he did not get for me.

In discussing the printed documents, I notice that the other documents identified as B-25, B-30, B-31 and B-32, were all printed matter put out either by the Long-Bell Lumber Company, the Longview Company or the Longview Chamber of Commerce. I noted that at the time I received the documents. I unquestionably read part of the "Longview Progress", Plaintiff's Exhibit B-31, and probably read the statements on page 6 of Plaintiff's Exhibit B-28.

Nothing in writing came from Mr. Kelley or anyone else connected with Halsey, Stuart & Company to me prior to the exchange of the $200,000.00 Longview Improvement District Bonds for the Chicago Tax Anticipation Warrants.

According to our records, the Finance Committee of the Equitable approved the purchase of these District 11 Bonds on October 17, 1930. We endeavor to accurately state in our minutes the dates on which we meet and what is done.

The Warrants which we had on hand were not acquired from Halsey, Stuart & Company. They were 1929 Tax Anticipation Warrants of the City of Chicago, payable out of the 1929 general taxes of that City. They bore interest at 6% from their date.

Q. You said that they had no maturity: Is that correct, Mr. Hubbell?

A. That has always been my understanding.

Q. I will ask you whether or not that particular block of warrants did not mature, have a maturity date stated as of November 1, 1930?

A. I expect the warrants speak for themselves.

Q. You have no recollection on that?

A. I have no recollection at the present time.

No interest had been paid upon these warrants since their issuance, and nothing had been paid upon the principal. The payment of principal and interest was dependent upon the ultimate collection of 1929 general taxes in the City of Chicago, and at that time the warrants were being paid in numerical order. I don't recall what particular status these bonds had as to their numerical position.

I presume that the reference in the minutes of October 17th, Defendant's Exhibit 3 for identification, to the purchase of only $185,000.00 of Longviews was because Halsey, Stuart & Company probably had at that time only $185,000.00 of those bonds. The reference in the minutes describing them as "Longview, Washington, Water Works, Electric, Gas and Improvement 6% Bonds" is purely a clerical error.

After the transaction of the 16th and 17th of October, 1930, I continued to see Mr. Kelley and he continued to make us offers, and we made purchases other than L.I.D.s from Halsey, Stuart & Company. We have a record of those purchases in our annual statement for each of these years; that is in the annual statement that was sent to the various State Departments. I presume it would be shown in the "Bond and Stock Holdings of Insurance Companies of Iowa," issued by Standard Statistics Company.

I presume we purchased $100,000.00 of Houston Light & Power from Halsey, Stuart & Company through Mr. Kelley in 1931. I haven't a copy of the annual statement which would show the various securities that had been purchased from Halsey, Stuart & Company during the year 1931.

We also made purchases from Halsey, Stuart & Company during the year 1932 and some in 1933. I do not think we made any purchases in 1934, and I do not recall that we bought $50,000.00 State of Michigan Soldiers' Bonus Bonds on April 24, 1934; that is a matter of record; I would have to check the facts.

In 1931 our purchases from Halsey, Stuart & Company would be very material, over $1,000,000.00. I do not recall what they would be in 1932.

Mr. Wood was, as a matter of fact, the Sales Manager only of the group that covered the general Iowa territory. He was not the General Sales Manager of Halsey, Stuart & Company.

Q. It was your practice in 1930 to shift investments

from time to time, if you did not like the particular investment, or if it was about to mature, and you would have to reinvest it anyway, or for other reasons which seemed to you adequate at the time, was it not?

A. In 1930?

Q. Yes.

A. No, sir, I don't think we did but very, very little.

Q. I will ask you if it is not a fact that in 1930 you bought $5,823,000 par amount of bonds, and sold $1,902,000?

A. That figure that you have given as to bonds purchased I recall as being certainly approximately correct. It may be exactly correct. I can not tell you as to the number sold without referring to the annual statement.

Q. I will ask you to refresh your recollection upon those figures, referring to Bond and Stock Holdings of Insurance Companies of Iowa,—these are the actual holdings—to bonds disposed of during 1930, showing a total of $1,902,000, of which $991,000 were redeemed?

A. Yes, sir.

Q. And the balance were sold?

A. That is what the record states, and I imagine it is correct.

I learned in June of 1931 the facts regarding the location of the exact city limits of Longview and its exact location with reference ot the Long-Bell, the Weyerhaeuser and other industrial plants, and I got this information from the reports prepared by Mr. Windsor dated June 3, 1930. Defendant's Exhibit 4 is that document. It was received by me from Mr. Windsor a few days after its date.

Mr. Windsor was sent out to the west coast to cover everything that we owned in that territory. I don't recall what he was sent for in particular.

The Port of Astoria Bonds were an obligation of the Port authority of Astoria, Washington, a Port on the Columbia River, further up toward the ocean than Longview.

I recall that we had $250,000.00 of these bonds at that time. They were not purchased from Halsey, Stuart & Company.

Subsequent to the receipt of Defendant's Exhibit 4, I also received a letter from Mr. Alex Hay giving me the information regarding the assessments levied upon lands in the City of Longview by the Consolidated Diking District. I think it was in August that Halsey, Stuart & Company sent on a letter from Mr. Hay to them. They had

communicated my inquiry to Mr. Hay and he replied, and they sent me either a copy or the original letter.

Defendant's Exhibit 5 is that letter, dated July 28th, from Mr. Hay to Halsey, Stuart & Company in reply to their letter of inquiry of July 7th, which is about the time that I made my inquiry of them.

We requested information from time to time in 1931, and we received it. I don't recall that there was any request that we made where we did not receive the information.

In 1931 we received a balance sheet and audited statement of the Long-Bell Lumber Company for the year ended December 31, 1930. This is dated January 1, 1931, and is Defendant's Exhibit 6, which was delivered to me, I presume, by Mr. Kelley in the course of one of his visits to us. It was received by us shortly after the date which it bears, March 20th. I read the balance sheet and the letter of Ernst & Ernst attached to it, which states that the Long-Bell Lumber Sales Corporation was formed and shows what assets were transferred to it. It refers to the syndicate loan agreement of November 1, 1930, and to all of the other transactions, including the borrowing of the $1,000,000.00 from the Southern Pacific Railroad subsidiary based upon the collateral of the Weed Logging Railroad. It also sets forth the amount of assets transferred by the Long-Bell Lumber Company to the Long-Bell Lumber Sales Corporation. These facts are reflected in the balance sheet showing the assets of the Long-Bell Lumber Corporation and subsidiaries, as well as in the letter.

Q. Now, after the receipt of this balance sheet, Defendant's Exhibit 6 for identification, and the accompanying printed letter of the general auditors for the Lumber Company, Ernst & Ernst, did you request any further information from the Long-Bell Lumber Company, or anybody else, regarding the Lumber Sales Company, or any of the facts connected with it?

A. No, sir, not at that time.

Q. You did not?

A. No, sir.

I also obtained from Mr. Kelley, shortly after the 30th of June, 1931, a six months' statement of the Long-Bell Lumber Corporation and subsidiaries headed, "Combined Income, Capital Stock and Surplus Account, Long-Bell Lumber Corporation and Subsidiaries, and Balance Sheet as of June 30th, 1931," consisting of three pages, marked Defendants' Exhibit 7.

I presume Mr. Kelley furnished that to me shortly after the 30th of June, 1931, so that by August of 1931 I knew where the plants of the Long-Bell Lumber Company, the Weyerhaeuser Company and the other corporations whose plants are located in the industrial districts outside the corporate limits of the City of Longview were located, and I had known before of the existence of the Diking District that I told about this morning, and the guaranty of its bonds by the Long-Bell Lumber Company, and I knew by August, 1931, that the assessments, in so far as the City of Longview was within the district, were spread upon such property.

I knew in April of 1931 the facts regarding the organization of the Long-Bell Lumber Sales Corporation, the loan from the subsidiary of the Southern Pacific for a million dollars, and the other facts disclosed by the balance sheet of January 1, 1931.

We started complaining to Mr. Kelley that we had been defrauded by reason of the facts alleged shortly after Mr. Windsor's return from his trip. I cannot recall what I said to Mr. Kelley. I cannot recall ever having said, in 1931, that I felt that Halsey, Stuart & Company had defrauded the Equitable Life Insurance Company. I don't think I ever said that to Mr. Kelley or any of the representatives of Halsey, Stuart & Company in the year 1932 or 1933.

I did not personally check the records, so I would not know the coupon dates to which the $266,000.00 of L.I.D. Bonds which we now hold in the several districts have been paid. It is my recollection that in most of those districts the coupon maturing in the early part of 1937 was paid.

The difference between the number of bonds which we originally acquired and the number which we now hold represents bonds which had been called for payment by the several L.I.D. Districts, and those payments were made by the districts themselves out of tax collections.

I swore to the original complaint in this case, as well as the amended and supplemental complaint.

The original complaint was filed in the spring of 1935; it was sworn to in April of 1935.

I recall the statement, at the time of the original complaint under oath, that "said bonds (referring to the Local Improvement District Bonds purchased by my company from Halsey, Stuart & Company) were worth not to exceed the sum of $60,000.00."

Our amended complaint, likewise sworn to by me, was filed in October of 1936, and I stated under oath that said bonds at the time of the purchase were not worth to exceed $86,000.00. I was referring there to the entire $353,000.00 which I said were not worth to exceed $86,000.00. I was referring to the entire $353,000.00 of bonds which we purchased in 1930 from Halsey, Stuart & Company, and was stating that at the time those bonds were purchased they were not worth to exceed $86,000.00.

Q. And yet you have received in cash more than $86,000 on those bonds, have you not?

A. We have received the difference between $266,000 and $353,000, and that is—

Q. That would be $87,000, wouldn't it?

A. $87,000, yes, sir.

Q. That is, exclusive of interest, of course—I am talking about principal?

A. Yes, sir.

Q. You are stating here that these bonds were not worth to exceed $86,000 at the time of their purchase, and you have already received $87,000 on the principal amount of the bonds you purchased?

A. Yes, sir.

In 1935 when we brought this suit and I stated that the bonds were not worth to exceed $60,000.00, we were still carrying those bonds on our books at substantially their par value. Defendant's Exhibit 8 is a part of the supplement to the 69th Annual Report of the Equitable Life Insurance Company purporting to set forth the securities which the Equitable Life Insurance Company owned and held as of the close of business December 31, 1935.

With respect to the Longview Local Improvement District Bonds, this report shows a par value of $272,000.00 and a book value of $231,200.00. In other words, we then owned $272,000.00 of these bonds, par value, and the amounts which we were carrying those bonds on our books was $231,200.00, and that is the Annual Report which we sent to our policy holders.

I was familiar with general business conditions in 1930 and with the fact that, during that year, not only the lumber business but most of the large industries were suffering from the general effects of the depression. Defendant's Exhibit 10 is a report of Equitable Life Insurance Company relative to the year 1930, dated Jan. 22, 1931. The statement therein that: "The business of life insurance has again proven its remarkable strength as a stabilizing factor in our country in the face of con-

ditions which have tested all branches of business and industry, in that the outstanding insurance companies have maintained their dependability for returns to their patrons", referred to the general business conditions which I have just mentioned.

Q. I call your attention also to the last paragraph of this report, Defendant's Exhibit 10, for identification, as follows, quoting: "All of the company's investments are carried on the books at a conservative basis of valuation. The total admitted assets according to the stringent rules of insurance departments amount to $118,702,147.00."

That statement, or a similar statement with, of course, a change in the figures as the admitted assets went up, occurred in all of your subsequent statements, did it not, your annual statements to policyholders?

Mr. Gamble: I object to that, calling for secondary evidence, not proper cross-examination. The subsequent statements would be the best evidence.

The Court: What do you think about it, Mr. Johnston?

Mr. Johnston: I think on cross-examination, if the Court please, having in mind his direct examination, I have the right to ask him whether they did not make the statement to their policyholders that all of the company's investments—

The Court: The objection has to do with subsequent statements, he said.

Mr. Johnston: I realize that.

The Court: So far as that statement is concerned, I think he may answer.

The Witness: The books of the company always reflected conservative valuation of the assets on the aggregate.

I was familiar with the fact, even as early as 1930, there were some defaults in municipals. I cannot just recall whether such defaults became aggravated—that is, continued in greater numbers—in the subsequent years 1931 and 1932.

We had in our portfolio, at the beginning of 1930 and during that year, a considerable number of public utility bonds purchased for the investment of the insurance company. We did not, in 1930, follow those bonds by obtaining quarterly or semi-annual statements as to the financial condition of the particular utility company during the year.

The Equitable Life Insurance Company did not take, nor did I see, the Commercial & Financial Chronicle in 1930. We took the Chicago Journal of Commerce, but

not the Wall Street Journal. We also took the Analyst, Barron's, Forbes Magazine, the Financial World, Industrial Digest, the Journal of Commerce, Monetary Times and, as I have already told you, Moody's Governments. I made a mistake. We did not take Forbes. The only service we took besides Moody's was the American Bond Quotation Service.

I did not know, in 1930, that the stock of the Long-Bell Lumber Corporation, the holding company, was listed on the New York Exchange, and I cannot recall during 1930 having read any of the newspaper reports that came out after the quarterly statements issued by the Long-Bell Lumber Company in 1930.

I do not think that during 1930 our insurance company made a practice of disposing of any issues which we held where during the year current reports or current condition of the company came to my attention and showed an unfavorable earnings statement.

The financial or investment experience of the remaining members of the investment committee besides myself was as follows: Mr. Nollen had been passing on investments for mortgage loans, particularly farm loans, for a long period of time. He had served on our finance committee, and had approved or disapproved the offerings that were brought before him. F. C. Hubbell had spent a large part of his life in the railroad business; served on our finance committee during a large part of the history of the company, when our investments were practically all in farm mortgages. J. W. Hubbell was in the real estate business and had served on the finance committee of the company for a few years. Mr. Griff Johnson had been a loan correspondent for the Northwestern Mutual Life Insurance Company. He had been with our company about twenty years and knew practically nothing about bonds. His whole experience had been in the farm mortgage field.

Defendant's Exhibit 9 is a letter written by me to Halsey, Stuart & Company, June 22, 1931; and Defendant's Exhibit 11 is a letter dated June 23, 1931, from Halsey Stuart & Company to me in answer thereto, which letters were sent out and received by me.

The letter of June 22, 1931 was written after I received Mr. Windsor's report, dated June 3, 1931.

Defendant's Exhibit 12 is a carbon copy of letter dated July 7, 1931, from Halsey, Stuart to the Equitable Life Insurance Company, the original of which we received.

Defendant's Exhibit 13, the memorandum dated May

27, 1931, from Halsey, Stuart to Kelly, came to my attention subsequent to its date. I do not think I saw it until I had a report from Mr. Windsor about June 3, but I may have.

Defendant's Exhibit 14, a letter of July 8th, to the Treasurer of the City of Longview from James H. Windsor, and Defendant's Exhibit 15, a letter of July 13th, from the Treasurer of the City of Longview to James H. Windsor, in answer thereto, I saw shortly after the dates which they bear, I presume within a few days. I do not recall whether or not I requested Mr. Windsor to make a survey of this entire L.I.D. issue, but I think he did make a second report to me, dated November 11, 1931, which is marked "Defendant's Exhibit 16." This report was delivered to me by Mr. Windsor on or about the date it bears. We were discussing this situation along with others, so I imagine that the report was made by Mr. Windsor at my request.

The statement contained in that report, "a careful check of the correspondence and offering sheet of Halsey, Stuart & Company, in regard to Local Improvement District bonds of Longview, Washington, fails to disclose any misstatements on their part," came to my attention immediately after the 11th of November, 1931. I had before me at that time, in addition to the data that I have testified came to my attention at the time of the purchase of the bonds, the several letters from Halsey, Stuart & Company, either quoting from Mr. Alex Hay or, in one instance, giving a copy of Mr. Alex Hay's letter. I had before me the balance sheet and audit of the Longview Lumber Company for the fiscal year ending December 31, 1930, and, of course, the original report of Mr. Windsor to me dated June 3, 1931.

My first contact with Mr. Clarence MacNeille, of Halsey, Stuart & Company, I believe was in the summer of 1933, when Mr. MacNeille saw me at Des Moines. We discussed the general question of the reorganization of the Long-Bell Lumber Company, with particular attention to the situation as to the Diking District bonds and the Longview Local Improvement District bonds. Mr. MacNeille requested my cooperation, as a large holder of L. I. D. bonds, in working out a plan for the reorganization so far as it affected those bonds. I said that we would see if we could cooperate and see if something could be worked out. Mr. MacNeille requested me to serve on a body representing the L. I. D. bondholders, but I indicated that I did not want to spend time on such a committee.

Subsequently I met Mr. Delander and Mr. MacNeille in Kansas City, for a two-day session, at which some of the officials and attorneys for the Long-Bell Lumber Company were present, and discussed pretty generally the L. I. D. and the D. D. situation. Subsequently I wrote the letters of June 7th and 8th, which are Defendant's Exhibits 17 and 18, to Mr. MacNeille. Following the writing of those two letters, I met Mr. MacNeille, Mr. Delander and Mr. Andrews in the City of Longview, where we spent several days discussing the various types of plans suggested. At that time Mr. MacNeille renewed the request that I become a member of the committee for the protection of the Diking District Bonds or the L. I. D. bonds in any reorganization that was ultimately worked out. I do not recall that I expressed a willingness to be a member of such committee provided Mr. Leith, of Halsey, Stuart & Company, took the burden as chairman. It is possible that I said I would go on the committee, but would not be chairman because it would involve too much work and I could not devote my time to it.

As a matter of fact, what Mr. Wood discussed with us, in regard to the amendment to the Iowa insurance laws, in 1927 and 1928, was solely the provisions qualifying or authorizing, under conditions prescribed, the investment by insurance companies in utility bonds; that was his sole connection, I do not think he had anything to do with the municipal section.

Inasmuch as we did dispose of the block of $200,000 Chicago, 1929 tax anticipation warrants, I presume we must have said we would be willing to exchange them for something else. I cannot recall just how it came up in my discussions with Mr. Kelley prior to the month of April, 1930. I do not recall the facts with regard to the payment of interest on those bonds.

Re-direct Examination of Mr. Hubbell by Mr. Gamble.

Having my attention called to a statement on page 9 of Plaintiff's Exhibit B-34, which is the consolidated balance-sheet of the Long-Bell Lumber Corporation for the year ended December 31, 1929, I did not at that time learn that the assessments for the payment of the Consolidated Diking District No. 1 were laid on lands and lots in the City of Longview. I did not learn of that fact prior to the receipt of a copy of the letter from Alex. Hay to Halsey, Stuart & Company, in August, 1931.

I bought no Longview Local Improvement bonds after

I received either the report from Windsor, dated June 3, 1931 (Defendant's Exhibit 4); a copy of the letter dated July 28, 1931, from Alex. Hay to Halsey, Stuart & Co.; or the consolidated balance sheet of Long-Bell Lumber Corporation for the year 1930, accompanied by a letter from Ernst & Ernst. In fact, all of the Longview Local Improvement District Bonds were purchased prior to 1931 except a few purchased in February of that year. The Equitable Life Insurance Company does business in other states than the State of Iowa, and is under the supervision of the Insurance Departments of those various states. These Insurance Departments issued instructions as to the manner in which the assets of the Company shall be set up on its books and such instructions were issued in the years 1935 through 1938.

Barring clerical errors, the Equitable Life Insurance Company undertook substantially to comply with the instructions of such Insurance Departments. Plaintiff's Exhibit B-50, is a list of securities held by Insurance companies, with valuations to be used in the Companies' annual statements as of December 31, 1936. This exhibit was gotten out by the Committee of the Insurance Commissioners Convention, which is a convention of these Insurance Departments which have supervision over all life insurance companies.

Q. I call your attention to page 474 of Plaintiff's Exhibit B-50, and ask you to state what valuation, if any, the National Association of Insurance Commissioners prescribed to be used in the Annual Statements of Life Insurance Companies as of December 31, 1936, on Longview Local Improvement District Bonds?

Mr. Johnston: That is objected to, if the Court please, as not proper re-direct examination, going into a year which was not touched on cross-examination, 1936, and not being otherwise competent, relevant or material to any issues in this case.

The Court: He may answer.

The Witness: Ten flat.

That means 10% of the face value without any interest credit.

Plaintiff's Exhibit B-51 is a supplement to the 70th Annual Report of the Equitable Life Insurance Company of Iowa, showing bonds owned by it on December 31, 1936. This shows the par value of the Equitable holdings in L. I. D. Bonds as $266,000.

Q. At what were they carried on the books of the Company as of that date?

Mr. Johnston: That is objected to for all the reasons previously stated; it is not re-direct, and, furthermore, it is not competent, relevant or material as of a year different from any year gone into on cross-examination, and if it is offered to prove damages by this method it is, of course, wholly incompetent and does not go to the period of time when damages must be fixed under the law, and is not a proper method of establishing those damages.

Mr. Gamble: It is not offered to prove damages. It is offered to meet a field in which Mr. Johnston—

Mr. Johnston: I did not go into the field in 1936, I went into it in 1935.

Mr. Gamble: The reports—

The Court: He may answer.

The Witness: $26,600.

Plaintiff's Exhibit B-52 is a supplement to the 72nd Annual Report of the Equitable Life Insurance Company, showing bonds owned as of December 31, 1938. This shows the par value of L. I. D. Bonds owned by the Equitable Life Insurance Company as $266,000.

Q. What was the book value?

Mr. Johnston: The same objection, going into a year not covered by cross-examination, not competent, relevant or material for any purpose, and certainly incompetent and irrelevant for the purpose of proving damages, not proper evidence.

The Court: The same ruling.

The Witness: $18,620.

In connection with Defendant's Exhibit 16, which is a memorandum prepared by Mr. Windsor under date of November 11, 1931, Mr. Windsor is not a lawyer.

The report further says:

"I think our chief criticism of Halsey, Stuart & Co. should be based on the following points:

"1. That these securities at no time were proper investments for an insurance company with all the facts considered.

"2. That to trade an insurance company out of the bonds of a full sovereign State, and put them into a small town special assessment bonds regardless of the guaranty is an unwise practice.

"3. We were led to believe and expect that certain bonds would be called on certain dates in a definite schedule, regardless of what the maturities of the bonds were.

"4. We were led to believe that the large mills of both lumber companies were in the city limits, and, therefore,

taxable for the local improvement districts, or at least some of them.

"5. At the time we bought these bonds Halsey, Stuart & Co. was in a position to know that the Long-Bell Lumber Company was not in a good financial condition, therefore, their guaranty was not good.

"6. Had we known that the Long-Bell Lumber Company owned such a majority of the taxable property we would have realized that guaranty was meaningless as, for example, a man endorsing his own note does not increase its value."

Mr. MacNeille never presented to me any definite plan of reorganization which had been agreed to by the Long-Bell Lumber Company or its interests. All of the discussions and plans were tentative in form and all contemplated a relief of the Long-Bell Lumber Company from its guaranty on the bonds.

Although some of the bonds owned by the Equitable Life Insurance Company in 1930 had a coupon rate of six per cent, that does not mean that they all returned to the Insurance Company six per cent interest. In some instances we paid more than par for the bonds and some, which carried a coupon rate of six per cent, had been owned for years, having been acquired in earlier years, when interest rates were generally higher.

There is a difference between a book value of securities owned by us appearing on our books, and the market value of those securities. So the figure shown as book value does not necessarily represent market value.

After the receipt of Mr. Windsor's report, in June, 1931, and after the information from Halsey, Stuart & Company, in July and August, 1931, I complained to Mr. Kelley about the bonds. I also presented in August, 1934, to Mr. Stuart or Mr. MacNeille, Mr. Simond and Mr. Leith, of Halsey, Stuart & Co., our claim now evidenced by the petition in this case.

Recross Examination of Mr. Hubbell by Mr. Johnston.

In my complaints to Mr. Kelley, I told him that I thought the bonds had been misrepresented; I said that a number of times. I never wrote a letter making any formal demand. I do not believe I ever stated to any other representative of Halsey, Stuart & Company than Mr. Kelley that I thought the bonds had been misrepresented.

When we presented our claim, in August, 1934, to Halsey, Stuart & Company, I cannot say exactly that we complained about the fact that Halsey, Stuart & Company had failed to give us all the information that they might have had concerning the financial condition of the Long-Bell Lumber Company in 1930, but I think we did; I can not just recall what we said.

The rules with respect to the carrying of the assets of the Insurance Company on its books have been in effect for a great many years; they were in effect through 1930 and also 1935. The rule is that when bonds are current they are carried on an amortized basis. That can be more than their fair cash value or less; the market value fluctuates on various issues.

Q. And when you state in your report, for instance, the one he showed you this morning, and the other reports, that you are carrying your assets upon a conservative basis, did you have in mind when the fair value of the securities and other assets of the Insurance Company?

A. Yes, sir.

Q. That was your opinion when you put out this report, or those reports?

A. That is correct.

Redirect Examination of Mr. Hubbell by Mr. Gamble.

A bond is "current" when its interest has been paid up to the date of the last coupon.

SAMUEL MARK MORRIS, called on behalf of plaintiff, being first duly sworn, testified as follows (by deposition):

Direct Examination by Mr. Gamble.

I have resided in Longview, Washington, since 1922, and since 1924 have been one of the Vice-Presidents of Long-Bell Lumber Company. I have very few duties which involve the Long-Bell Lumber Company, they are principally in respect of subsidiaries thereof. One is called the Longview Company, which is totally owned by the Long-Bell Company; another was called the Longview Suburban Company, no longer in existence, but which was a wholly-owned subsidiary of the Long-Bell Company.

I am Vice-President of the Longview Company and have

been since the date of its organization. I also was a Vice-President of the Longview Suburban Company and was from the time of its organization. Both of those companies were organized in about 1924. I look after the general operations of the Longview Company, being in active charge under the President and Chairman of the Board. Mr. Long was Chairman of the Board and Mr. Nelson President and had those respective positions with the Long-Bell Lumber Company. Neither Mr. Nelson nor Mr. Long lived in Longview, but lived in Kansas City, Missouri.

I occupied those positions in 1925, and was familiar in that year with the fact that certain street, side-walk and sewer improvements had been installed within the corporate limits of the City of Longview. I was here in Longview all the time except when I might have been out of town on occasional trips. I was aware of the fact that certain local improvement districts were formed to carry on the financing of the construction work of these improvements. Districts Numbers One, Two, Three, Four, Five, Six and Seven were in the City of Longview and issued bonds.

I had nothing to do with the sale of the bonds. That was carried on by Mr. Long and other officials of the Company. I do not recall Mr. Sleep, Vice-President of Halsey, Stuart & Company, of Chicago, Illinois. I might have signed the papers consummating the sale of $1,250,000 par value of L. I. D. bonds of District One to Seven, inclusive, but I do not remember it. The records of the companies under my charge are kept by the Secretary of the Company.

Having called to my attention the document, consisting of three pages, which bears the signature of R. W. Stith, and title, Secretary of the Long-Bell Lumber Company, and having impression of a seal of the Long-Bell Lumber Company, I would say that that was Mr. Stith's signature.

Even having my attention directed to the first paragraph of the letter, which reads:

"This will confirm our agreement made with your Mr. W. I. Sleep in Longview today with respect to the sale to you by us of approximately $1,250,000.00 par value of local improvement district bonds to be issued in the City of Longview under provisions of Chapter XXII of Remington's Compiled Statutes of Washington, 1922, or such thereof as we receive as hereinafter stated:"

I do not recall Mr. Sleep, although I would say Mr. Sleep might have been in Longview in connection with the purchase of these bonds on May 7, 1925. I would say that the

agreement for the sale of these bonds was worked out by the Kansas City office. It was sent out here and, being an officer of the company here on the ground, I signed it.

I have no recollection of discussing with Mr. Sleep the type of improvements which was covered by those bonds. The letter of May 7, 1925, was signed by myself and Mr. Sleep.

On May 7, 1925, one of the two large manufacturing and lumber mills of Long-Bell Lumber Company near Longview had been completed. The lumber operations of the Weyerhaeuser Timber Corporation near Longview had not been completed on May 7, 1925, but were in 1926. I would say they must have started work in 1925. The plant of the Longview Fibre Company, located just outside of the corporate limits of the City of Longview had not been constructed on May 7, 1925, and I could not really say whether or not construction had been begun at that time. I was here then and was vitally interested in the development of the town site. The construction of these two plants had a direct influence on the development of the town site of Longview. I could not tell without looking up the records whether or not the districts referred to in Exhibit P-34 had actually been created on May 7, 1925. The word "proposed" means the intention to create those districts. That would be the literal interpretation of it.

I was familiar with the location of the corporate limits of the City of Longview in 1925. I do not recall just about the date, but they were enlarged about in March of 1926. During the year 1925 the plant site, and the plants that were then in existence, of the Long-Bell Lumber Company were not located within the corporate limits of the city of Longview and they never have been. The same is true of the Weyerhaeuser Timber Company plant and plant site, the plant site and building of the Longview Fibre Company, and the plant of the Standard Oil Company. As part of the enlargement of the corporate limits of the City of Longview, a strip of land was taken from the corporate limits, as they existed in 1925, down to the so-called Port Dock property, but this narrow strip of approach to the Dock property was not within the corporate limits of the City of Longview on May 7, 1925.

I was perfectly willing to give truthful information concerning the physical facts to Halsey, Stuart & Company in connection with the sale to them of these bonds; we did not hold back anything I know of. We would not have refused to give Mr. Sleep any information with respect

to the facts. I did not tell him the Long-Bell Lumber plants, the Longview Timber Company plant nor the Longview Fibre Company plant were within the City of Longview. I do not remember Mr. Sleep at all, so I can not remember showing him or telling him about the city limits.

The first bond transaction involved over a million and a quarter of dollars in this municipality. On May 7, 1925 the corporate limits did not touch the Columbia River. And the properties upon which the Long-Bell Lumber Company's extensive operations were located were between the corporate limits and the Columbia River. The same thing is true about the extensive operations of the Weyerhaeuser Timber Company, and the Longview Fibre Company, and the Standard Oil Company. The Long-Bell Lumber Company has two mills in its plant site near Longview. The Weyerhaeuser Timber Company bought from us six hundred acres, which is incorporated in their plant site, and the Long-Bell Fibre Company bought one hundred acres. The plants of all these concerns I have mentioned, the Long-Bell Lumber Company, the Weyerhaeuser Timber Company, the Fibre Company and the Standard Oil Company had been built prior to the month of May, 1930. The total investments of the plants and plant sites of the Long-Bell Lumber Company on the 1st day of May, 1930 would, in my judgment, probably have reached ten million dollars. I have no way of telling what the Weyerhaeuser Timber Corporation's plant site and properties cost them, but I am familiar with values in Longview and with the lumber industry in Longview. That plant has practically the same cutting capacity as ours, has three mills and a pulp plant. Their total investment would be about ten million dollars, though I do not like to put a price on somebody else's property, and what it is worth and what they invested in it are entirely different questions. The value of the Longview Fibre Company site and property on May 1, 1930 was, off-hand, about two and one-half million dollars.

I know Mr. C. E. Lombardi. He is an attorney and was located in the City of Longview in the year 1935. He was a member of the law firm of Baker, Botts, Andrews & Garwood at that time, which firm represented the Longview company and were general counsel for Long-Bell Company. Mr. Lombardi, during his sojourn in the City of Longview, represented the Longview company in legal matters. We had a law department in the Longview Company and Mr. Lombardi was a member of that department at that time. There was a lawyer named J. H. Secrest,

who represented the Longview Company at the same time Mr. Lombardi was here, and he was also City Attorney for the City of Longview. T. H. Davis was what we call out land man, who worked for the Longview Company too. He was at one time City Engineer of the City of Longview.

I know about Mr. R. E. Simond and who he is with, but I do not know whether or not I ever met him. He is with Halsey, Stuart & Company but I do not know what his duties are. I do not recall ever seeing him in Longview.

I know Mr. Clarence T. MacNeille. He was out here two or three times during the early stages of construction. I think he was here in 1922 for the first time. I knew he was the Vice-President of Halsey, Stuart & Company but I do not know what his other duties were. He was out here several times during the first few years we started. We had attained some degree of development, however, when he was here, for I think he was here after 1924.

I do not recall that Mr. MacNeille requested any certain information concerning the physical surroundings of the City of Longview. We talked to him in a general way as we did with lots of visitors in those days. We had no intention of withholding information from him. I do not know Mr. Stuart and cannot tell you whether or not he was in Longview.

Q. Was Mr. MacNeille out here at the time that the Long-Bell Lumber Company sold and issued the first improvement bonds to Halsey-Stuart & Company?

A. He was out here two or three times after 1922, when we came here.

All of the real estate within the corporate limits of the city of Longview is not platted into lots and blocks.

Q. Can you tell us about how many there were, in gross number of lots, that were platted in the city of Longview?

Mr. Johnston: This line of inquiry I object to as not being competent, relevant or material to any line of inquiry justified by the allegations of the complaint, or by the plaintiff's claim, or alleged misrepresentations and ask that my objections go to the entire line.

The Court: The objection may be noted. Overruled.

A. I would say in the neighborhood of 7,000. Roughly and off-hand, I would say about a third of the area of the real estate within the corporate limits of Longview was comprised in those platted lots, about two-thirds being unplatted. The Longview Company actively started its efforts to sell real estate within the city in 1923. We had a

sales manager, assistant, industrial managers, and something like ten salesmen. Most of the sales were made on contract, ten per cent. down and the balance in a period of ten years. If the subsequent payments or installments were not made the Longview Company had to forfeit the contract, taking the property back and repossessing it. We did national advertising in connection with the sale of real estate in Longview and prepared various circulars, letters and folders. The West unit of the mill of the Long-Bell Lumber Company, located near Longview, began operations in 1924 and the East unit in 1926.

Q. What was the trend of the lumber business in the Pacific Northwest from 1926 to 1930?

Mr. Johnston: Objected to for the reason that it is not competent, relevant or material to any issue presented in this case.

The Court: Overruled.

A. A gradual slowing up. And the Long-Bell Lumber Company experienced that slowing up as well as others.

Q. What is the fact with reference to the trend of sales of real estate in the city of Longview from 1926 down to 1930?

Mr. Johnston: The same objection to that line of questioning.

The Court: The same ruling.

A. They varied from year to year. Our sales for some years would be down and some up. Our biggest sales were from 1923 to 1928. The trend of our sales of the Longview Company real estate somewhat coincides with the trend of the lumber industry in this territory. After the formation of improvement districts Nos. 1 to 7, inclusive, there were 23 other local improvement districts formed.

In some instances assessments upon the properties within the limits of those respective districts were greater in amount than the gross amount of the bonds which were issued by those districts, speed in the creation of districts was what caused the errors. The cost of improvements was merely estimated, and that excess was later refunded to the property-owners.

Those assessments were payable in ten equal annual installments, bearing interest at six per cent., and the property-owner had the option of anticipating the payment dates of those assessments. He could pay them off at any time he wanted.

The Longview Company at times improved certain lots in the City of Longview by the erection of buildings, including this one at the corner of Broadway and Com-

merce, which building it now owns. We took our time of ten years within which to pay off the assessments levied in Districts 11 and 19 against this building. We did not pay any assessments except on certain properties that were paid in order to provide money for interest payments on the bonds. Where the collections the City Treasurer made on assessments generally were insufficient to equal the interest requirements on the bonds that were outstanding at the time on the several improvement districts, we anticipated for the Longview Company future payments in order to provide the money. This practice ceased, although I can not give you the exact date. When we ran out of money we quit.

When we did anticipate future installments of these assessments and made payments to provide interest payments on the bonds when there was a deficiency in general collection of assessments, we paid it on improved property as far as it went, and when we needed others we figured what was best, in our judgment. On the least or less desirable unimproved property we did not anticipate payments.

I recollect being in your office in Des Moines, Iowa, in the latter part of 1935, with Mr. D. G. Hughes and Mr. Jesse Andrews.

Q. As a result of that conference, did not the Longview Company, in November of 1935, select a number of parcels of real estate in the City of Longview and make a complete payment of all remaining Longview Improvement District assessments on the property so selected?

Mr. Johnston: Just a moment! That is being objected to. It relates to something that took place a considerable time after the institution of this suit. It cannot possibly have any bearing in a law action.

The Court: That objection will be overruled.

A. Yes sir. There was a substantial payment of money.

Mr. Alex Hay is our tax agent and was on May 5, 1934.

The document P-35 was prepared in the office of the Longview Company, in Longview, Washington, and correctly portrays the percentage of the total of the local improvement district assessments unpaid at its date, May 12, 1934, which were assessed upon properties of the Long-Bell Lumber Company's subsidiaries in each district as well as the assessed valuation of the real estate in each district. This tabulation was accompanied by the letter from Mr. Hay to Halsey, Stuart & Company, dated August 12, 1932. I would say that the paper marked for identification "P-36", purporting to be a carbon copy of

a letter addressed to Halsey, Stuart & Company under date of May 16, 1927, bears the signature of Mr. Alex Hay. I have produced this letter from the original files regularly kept by the Longview Company.

Mr. Gamble: I now, in connection with this examination, desire to offer Exhibit P-35.

Mr. Johnston: I object. There is no basis for the offering of that exhibit in evidence for the purpose of showing assessed valuations for ad valorem taxes at a period long subsequent to the sale of these bonds. It is incompetent and irrelevant for any purpose, and certainly incompetent and irrelevant for the purpose of damages, if that is the purpose, since they must be measured at the time of sale; and it is an intercompany communication in no respect binding upon Halsey, Stuart & Co. For all those reasons I object to its competency, relevancy and materiality.

The Court: It may be admitted.

(PLAINTIFF'S EXHIBIT P-35 offered and admitted in evidence over objection of defendant.)

Mr. Herriott: I offer it in evidence. Any objection except that you object to the copy on the ground the original has not been accounted for?

Mr. Johnston: Well I object to its competency and relevancy. I don't recall the exact letter now. Is that the letter you identified?

The Court: You said you had no objection to it?

Mr. Johnston: No, I didn't say I didn't have any objection to it. I said no objection to the last mentioned agreement.

Mr. Herriott: Oh, I am sorry.

Mr. Johnston: Counsel didn't read the deposition correctly. I object to its competency, materiality, and relevancy to any issue in this case.

The Court: What is the situation now? Are you offering an exhibit?

Mr. Johnston: He is offering it, as I understand.

The Court: All right, proceed.

Mr. Herriott: It is attached to the deposition.

We made sales reports to Mr. Long, Chairman of the Board, and to the Long-Bell organization periodically. They were sometimes made monthly and not always annually. We made up all kinds of reports during the early days.

Cross-Examination of Mr. Morris by Mr. Johnston.

Mr. Johnston: Well, I will read the cross examination, including those portions, your Honor, to which I have objected, without prejudicing my position with respect thereto.

Negotiations regarding sale of Longview Local District Bonds were conducted by the Home Office of the Long-Bell Lumber Company, at Kansas City, with Halsey, Stuart & Company and I had nothing more to do with them than to discuss the matter. I do not recollect ever having met Mr. Sleep, nor having talked with him about the L. I. D. Bonds. I am pretty sure I have not met Mr. Simond. Mr. MacNeille had nothing to do, in so far as I know, with the acquisition of the L. I. D. Bonds by Halsey, Stuart. I cannot remember of ever having discussed with Mr. MacNeille in his visits out here the question of the L. I. D. Bonds.

I never withheld any information from Halsey, Stuart & Company which I thought legitimate. So far as I can recollect, no questions were asked by representatives of Halsey, Stuart & Company regarding the location of the industrial plants or regarding the amount of frontage on the Columbia River or any of the other details with respect to the final lay-out of the City of Longview. If any questions had been asked I would have told them all we knew about it.

In regard to the advertising done by the Longview Company in connection with the promotion of the sale of properties at Longview, Identification D-16 was one of the brochures or illustrated folders used, prepared at the direction of the Longview Company and distributed quite widely in connection with our advertising campaign about 1925. We put out literature from 1923 up to at least 1926, including extensive advertising. Mr. E. L. Lambuth is a former real estate manager of the Longview Company. He was real estate manager in 1925, in charge of the real estate sales and publicity in connection with them.

Local Improvement District No. 1 covered street paving, but the Longview Company paved certain streets before the Local Improvement District was formed, and these pavements were not charged against the abutting property nor in the assessments levied under District No. 1. The East side of Kessler Avenue, from Hemlock Street North, was put in by the Longview Company and the.

abutting property on that half of the pavement was not charged therefor under the assessment spread by Local Improvement District No. 1.

Where you see the lines marked in red, there is the pavement that the Company put in, and the cost of that paving was not assessed against property-owners. That accounts for the fact that certain property which might otherwise be within District No. 1 is not assessed for the paving because that cost had already been paid by the Longview Company. With respect to the Long-Bell Company, the Weyerhauser Company and the Longview Fibre Company, located along the Columbia River, they put their own roadways inside their own property and put in their own sewer systems, which ran into the Columbia River.

In regard to the substantial payment made on account of L. I. D. assessments by the Longview Company in November, 1935, that payment was made as a result of an agreement between the Long-Bell Lumber Company, defendant's counsel and the Equitable Life Insurance Company. In consideration of such payment the Equitable Life Insurance Company agreed not to perfect its appeal taken from the final decree entered in the 77-B proceedings at Kansas City.

The assessed valuation for ad valorem tax purposes on various parcels of land in the City of Longview was fixed by the County Assessor of Cowlitz County. In this state the assessed valuations are supposed to be fifty per cent of the real values, but in principle the assessor's findings do not reach fifty per cent of the real value of the property, meaning market or going value. It depends largely upon the individual assessor as to what figure he will adopt.

Mr. Walsh had jurisdiction over the various streets that were paved by the Longview Company prior to the organization of the Local Improvement Districts and the cost of which was not assessed back to the property-owners in these districts, so that he can take one of these maps and mark it in red to show those various streets.

Redirect Examination of Mr. Morris by Mr. Gamble.

Mr. MacNeille had no connection with the purchase of these L. I. D. bonds, that I remember. I do not know who negotiated for the purchase of those bonds on behalf of Halsey, Stuart & Company, so I cannot say as a matter of fact that Mr. MacNeille had no connection.

One-half of Kessler Avenue, at the point described by Mr. Johnston in his cross-examination, was paved and paid for by the Longview Company. That pavement was twenty feet wide, the street being a forty-foot street. This half that was paved was the east half. The west side of Kessler Avenue at that point is what we call Lake Sacajawea. The west half of Kessler Avenue was paved in 1925 by L. I. D. No. 1, which was one of the earlier Local Improvement District operations. Kessler Avenue, as originally laid out and before the east half was paved, was designed for a forty-foot pavement and its west half was paved to carry that out. On the lots abutting on the east half of Kessler Avenue are some of the nicest houses in town: I happen to live there. Instead of paying assessments for paving the west half of Kessler Boulevard, we paid the company. We, as property-owners, got benefit out of making that a forty-foot strip, but we did not pay any assessment for that benefit.

There are no houses on the west side of Kessler Boulevard along the shore which slopes down into the water.

"Q. And yet the cost of constructing the West half of the pavement on Kessler Avenue where that forty foot street runs along in front of those nice houses is not assessed against that vacant ornamental property?

A. Yes, which we would have paid for if we had not run out of money. We paid up until 1931."

Plaintiff's Exhibit P-37 is a letter dated August 12, 1931, addressed to Halsey, Stuart & Co. and bearing the signature of Alex Hay, which is accompanied by a tabulation showing bonds sold, called to date, and per cent of amount due in 1931 levied against Long-Bell and subsidiaries. This was one of the records in our original files as ordinarily kept.

Mr. Gamble: We offer in evidence as Plaintiff's Exhibit the paper marked or identified as P-37, consisting of two pages, and ask an agreement that the original may be withdrawn and a copy substituted by the reporter in place of it.

Mr. Johnston: Well is that being offered now—P-37?

Mr. Gamble: Yes.

Mr. Johnston: Well I object to its competency, materiality and relevancy for any purpose.

The Court: What is it?

Mr. Gamble: This is a letter from Alex. Hay, tax agent of Long-Bell Lumber Company, at Longview, Washington, to Halsey, Stuart & Company, dated August 12, 1931.

The Court: It may be admitted, subject to your objection.

(PLAINTIFF'S EXHIBIT P-37 offered and admitted in evidence over objection of counsel for defendant.)

The Witness: Plaintiff's Exhibit P-38 is a letter from R. E. Simond to Mr. C. E. Lombardi under date of August 7, 1925.

Mr. Gamble: We offer and introduce in evidence Plaintiff's Exhibit P-38.

Mr. Johnston: I objected to that, and I object now, on the ground of its competency, materiality and relevancy.

The Court: What is that Exhibit?

Mr. Gamble: This is a letter from Halsey, Stuart & Co. to Mr. C. E. Lombardi, Longview, Washington, dated August 7th, 1925, written in anticipation of our offering shortly approximately $1,250,000 Longview, Washington, Local Improvement District 6's.

The Court: What does it go to, to show the relationship between Halsey, Stuart—

Mr. Gamble: It asks for information concerning these districts; also as to the form of the bonds.

The Court: I take it you are, the reason you are attempting to introduce it is to show the relationship between Halsey, Stuart and the Long-Bell.

Mr. Gamble: That is right.

The Court: I will overrule the objection.

(PLAINTIFF'S EXHIBIT P-38 offered and admitted in evidence over objection of counsel for defendant.)

The Witness: Plaintiff's Exhibit P-39 is a letter from Mr. T. H. Davis to Mr. C. E. Lombardi, dated August 17, 1925, and Plaintiff's Exhibit P-40 is a copy of a letter from Mr. Lombardi to T. H. Davis, dated August 12, 1925, which letter bears the initials of Mr. Lombardi.

Mr. Gamble: I offer and introduce in evidence Plaintiff's Exhibit P-40.

Mr. Johnston: The same objection, if the Court please.

Mr. Gamble: That is a letter from Lombardi to T. H. Davis, requesting a statement of assessed valuation as to certain of these districts.

The Court: The same ruling.

Mr. Gamble: Plaintiff's Exhibit P-39 is the reply.

Mr. Johnston: The same objection as to that, if that is now being offered.

(PLAINTIFF'S EXHIBITS P-39 AND P-40 offered and admitted in evidence over objection of counsel for defendant.)

There had been platted in the town of Longview in the neighborhood of eight or nine thousand lots. Anything we had was for sale.

Mr. Gamble: I desire to offer and introduce in evidence Exhibit P-34, being a letter contract identified by Mr. S. M. Morris at our previous session, executed by him on behalf of the Company and by Mr. W. I. Sleep on behalf of Halsey, Stuart & Company. I offer it now because the transcript of testimony fails to show it was offered in evidence previously.

Mr. Johnston: I object to it on the ground of its competency, materiality or relevancy.

The Court: Are they offered?

Mr. Gamble: It is being offered.

The Court: What is that?

Mr. Gamble: It is a letter signed by Mr. Morris and Mr. Sleep involving the first purchase of these bonds by Halsey, Stuart & Co. from the Long-Bell Lumber Company.

The Court: Morris represents the Longview Company, and Mr. Sleep Halsey-Stuart?

Mr. Gamble: Yes.

Mr. Johnston: There is nothing anywhere that in any way bears upon the issues in this case.

The Court: I will overrule the objection. It may be admitted.

(PLAINTIFF'S EXHIBIT P-34 offered and admitted in evidence over objection of counsel for defendant.)

The Witness: Mr. B. L. Lambuth was at one time manager of the real estate department of the Longview Company and of the Longview Suburban Company, and was employed by those companies at Longview in December of 1927. Mr. A. M. Tracy was a clerk at the offices.

The report dated December 31, 1927, addressed to Mr. R. A. Long, Chairman, Kansas City, Missouri, and entitled "Annual Report, 1927" and "Monthly Report for December, 1927", bearing the typewritten name of B. L. Lambuth, Manager, Real Estate Department, and signed by A. M. Tracy, having two pages attached, one marked "Sales Analysis" and the other "Analysis of Cancellations", have been produced at your request from the files of the Company, and marked "Exhibit P-50".

"Q. Calling your attention to the first tabulation, on the first page of this report, may I ask if it purports to show the quantity of gross sales for the month of December, 1927 and for the year 1927?

Mr. Johnston: I object to that on the ground the docu-

ment would speak for itself. First, the witness should not attempt to characterize it.

Mr. Gamble: Merely an explanation, your Honor.

The Court: Go ahead.

A. Yes, sir.

Q. Sales of real estate by the Longview Company and the Longview Suburban Company were largely made on terms of ten per cent down and the balance payable over a ten-year period?

A. Yes.

Q. State whether or not the reports of gross sales in the month of December, 1927 and the year 1927 were on the basis of sales on such terms?

Mr. Johnston: Same objection, that the document speaks for itself.

The Court: Same ruling.

A. Yes. The special title, "Grand Total," of $4,682,-112.77 is the grand total of all sales made up to that date from the time we started business here.

Q. Would that Grand Total reflect any properties you had taken back or become repossessed of because of failure of the purchasers to carry out their purchase contracts?

Mr. Johnston: Objected to on the same grounds. The document speaks for itself; it is not ambiguous and requires no explanation.

The Court: Isn't the document going to be introduced in evidence?

Mr. Gamble: Yes, sir.

The Court: Overruled.

A. That is the total, before deductions and so forth. There is practically no difference between forfeitures and repurchases. As far as I can recollect there has been practically no property repurchased. In other words, we cancel the contract and that is the end of it. When we got it back we closed out our compilation of it either as a forfeiture or repurchase. From the report it would indicate that we traded new property for property previously sold, but I do not recall what they meant. There has been very little or no trading done by us.

Exhibit P-50 is a document which was regularly kept in the conduct of our business and was a report made to R. A. Long, Chairman of our Company. On the page entitled, "Sales Analysis as of December 31, 1927", the total under the item "Lots Sold" is 2,629¼. That represents the sale of lots from the beginning until the end of December, 1927. "Pending Lots, 10¼" would mean lots for which the sale had not been completed. "Reserved Lots,

419" would mean lots that we still had for sale. The price opposite those 419 lots of $1,270,111.49 would represent what we expected to get for those lots if we sold them on terms like the others. The figure 2,062¼, under the column "Unsold", represents the remainder of the lots unsold. It might not be exactly right, but if you took the figures of lots sold, being 2,629¼, plus lots pending of 10¼, plus lots reserved of 419, plus lots unsold of 2,062¼, it would represent the total number of lots on which we then had transactions or expected to have transactions. That stuff along here, under the "Reserved" column, is in tiers, where we really had not sold lots. That is the territory between the corner of Fourteenth and Commercial and the hotel—Fourteenth, Fifteenth and Sixteenth Streets. Fifteenth Street, I think, was a hundred-foot street, wider than any other street, and, under a restriction, designed and sold for retail business along a certain area. Fifteenth Street was a first-class retail district, between platted areas. It did not cover the entire Longview business district. From Twelfth Street east to Seventh it was second-class retail district. Commerce Street was designed for first-class retail district.

The sheet in the report entitled, "Analysis of Cancellations," the first line of which is entitled "Gross Sales," represents the total amount of property sold for each of the years shown. "Cancellations" represents the property we had to take back and "Net Sales" is a result of the deductions of those properties we took back. "Cancelled" is the same as that, being the total amount of the property cancelled during those years. $79,683.00 of the property which was purchased in 1923 was cancelled in 1924. The figures under the heading "Cancelled", opposite the words "1925" and under the columns headed "1923", "1924", "1925" represent the cancellations or repossessions of properties sold in the respective years. That report is accurate or at least supposed to be according to the records kept in the accounting department of the Company.

Q. I observe net sales in 1923, as shown by the report, were $1,162,061, and as shown in and within the subsequent years, and I will ask you to look at the report and tell me whether or not there was a constant reduction in gross amount of net sales in those years except the year 1925.

Mr. Johnston: I object to the question, going into the contents of this document. I will, of course, object to the document itself when it is offered.

The Court: Are you going to introduce the document?

Mr. Gamble: Yes, sir.

The Court: The same ruling.

A. The sales of 1923 as in force on December 31, 1927, were in excess of the years in the various columns, 1924, 1925, 1926 and 1927.

Q. The net sales in 1923 were $1,112,062.41. Is that right?

Mr. Johnston: The same objection.

The Court: The same ruling.

A. Yes.

Q. Had net sales on a similar basis shrunk to the figure represented for the year 1927 to $336,683.40?

Mr. Johnston: That is the same objection. It calls for a conclusion also.

The Court: The same ruling.

A. It means the sales of 1927 were $336,000, and 1923 $1,162,061.

The pages showing the names and descriptions of property are an analysis of sales pending, which we had in negotiation not yet consummated. I assume it refers to the 10¼ lots referred to in the other report. There are two different figures, one at the bottom of the sheet, entitled "Analysis of Sales as of December 31, 1927," showing gross sales in 1927 of $499,745.28, while on the first page of the report the column "Gross Sales for 1927" has the figure $199,786.68. You see, we had Company property and R. A. Long property. One may have been the total of both Company and R. A. Long properties and the other the Company property alone. That would be the only way I could account for the difference. We sold considerable property to Mr. Long during those years. It would be gross sales of Company property during December, excluding all property transferred to the R. A. Long account. The sales to him should be represented in the dollar value outside of the gross sales of the Company. Some of the sales to him were on contract and for part of them he paid cash.

Exhibit P-51, the report addressed to Mr. Long under date of May 31, 1928, bears the printed signatures of Mr. C. E. N. Brown, who was successor to Mr. Lambuth as Manager of the Longview Company and the Longview Suburban Company in Longview. This document was obtained from the regular records of the Company and was currently made at the time of its date. So far as I know it represents calculations on the same basis as I have testified to with respect to Exhibit P-50, but made in the month of May, 1928.

Q. From your examination of the report, what was the total amount of net sales consummated in May, 1928, of real estate?

Mr. Johnston: I think the same objection goes to all of this line of questions, your Honor.

The Court: Yes.

A. $326.13. That means we took back that much certain property and sold certain amounts and left a balance of $326.13.

The pages of this report were prepared and based upon the same sort of data as I testified to with respect to Exhibit P-50 and are subject to the same explanations.

Mr. Herriott: (Reading) "I shall not offer Exhibit P-50 and Exhibit P-51 at this time. I expect to offer them, but I wish to arrange,"— and so forth.

Mr. Gamble: I desire to offer both of them at this time.

Mr. Johnston: I object on the ground they are incompetent, irrelevant and immaterial. They go to none of the issues presented by the pleadings, and to none of the claimed misrepresentations, or representations upon which the plaintiff has a right to rely. Therefore, they are not competent here.

The Court: Overruled. They will be admitted.

(PLAINTIFF'S EXHIBITS P-50 and P-51 offered and admitted over objections of counsel for defendant.)

The Witness: I think the maximum and minimum number of employees of the Long-Bell Lumber Company and subsidiaries at Longview and the mill there would be 1,500 and 3,000. The majority of those employees reside within the corporate limits of Longview, some outside. The Weyerhaeuser Timber Company, in its operations near Longview, employs a minimum of 2,000 and a maximum of 3,000. They do not have as great a percentage living in Longview as does the Long-Bell Lumber Company. Off-hand, I would say sixty per cent. in Longview and forty per cent. in Kelso and elsewhere outside. The employes of the Longview Fibre Company have been continually increased from the start. Based on the past two or three years, I would say they employ a minimum of 700 and a maximum of 1,000, who live similarly to those employed by Weyerhaeuser.

These employees use the paved streets going to and from work. There is nothing else for them to do. Those of them in Longview use the other facilities that have been installed in the Local Improvement Districts, and some of them that live outside the city use them in getting back and forth to the plants.

Longview was founded to make it as attractive as possible for people to live, and we expected a great many of the people who lived there to work for the plants just mentioned.

The streets constructed and paid for by these L. I. D. bonds were used by everybody, including loggers hauling logs to the plants of the Long-Bell Lumber Company and the Weyerhaeuser Timber Company, and to that extent they are used by the Long-Bell Lumber Company. I might add that at the time the streets were built we did not buy any logs from the trucks. That is a recent development, an evolution in logging.

Mr. Herriott (Reading): "I will ask that the Reporter have this paper, consisting of three pages, photostated, and offer the photostatic copy in evidence in lieu of the original as Exhibit P-34. I also offer in evidence copies of Exhibits P-50 and P-51."

Mr. Johnston: P-50 and P-51, if the Court please, are these two long reports made by the Company to the home office of the Long-Bell Lumber Company with respect to sales of real estate during the particular intervening months and periods of time, in Longview, and I object to those on the ground they are not competent, relevant or material to any issue presented here; do not go to any of the alleged misrepresentations on which the plaintiff has a right to rely.

Mr. Gamble: We will show notice of these reports were sent to Halsey, Stuart & Co.

The Court: Objection overruled. They may be admitted.

(PLAINTIFF'S EXHIBITS P-34, P-50 and P-51 offered and admitted in evidence over objection of counsel for defendant in their competency, materiality and relevancy.)

Cross-Examination of Mr. Morris by Mr. Johnston.

Aside from the fact that I knew about the subject matter in a general way, I had nothing to do with the writing of the letters, or securing the information therein contained, which were shown to me yesterday as passing between Mr. Lombardi, Halsey, Stuart & Co. and Mr. Davis. I was not a party to drafting those letters.

As to my answer concerning talking to Mr. Sleep with respect to the development of the City of Longview, my answer, "Very much so," was a reply to the question whether the City of Longview was in a formative stage

at that time. I do not remember Mr. Sleep at all. I do not remember whether there was any discussion of the sale of L. I. D. bonds for the organization of those districts prior to 1925.

The only time I remember seeing Mr. MacNeille out here was in the early days of 1922 and 1923. I think he was out here in 1923 and possibly a year or two later. I have no recollection of talking with Mr. MacNeille about any L. I. D. Districts at the time he was out here. I really do not know what Mr. MacNeille's mission was; he was just looking us over. There were no negotiations of which I have any knowledge, respecting the sale of L. I. D. bonds, prior to the year 1925.

The principal type of lumber in the Pacific Northwest is yellow Douglas fir. The price trends of Douglas fir in 1926, 1927 and 1928 was fairly level. It got a little weaker in the latter part of 1929, when we had our break, but our average was pretty nearly on a level keel for the three years of 1926, 1927 and 1928. As I remember my former testimony, 1924 was a very fine year in the fir industry, 1925 not so good and the next three years, 1926, 1927 and 1928, about equal, through the first half of 1929, so the real decline began in the latter part of 1929.

The Longview Company and the Longview Suburban Company paid all yearly assessments for the year 1930, payable in 1931, on all property. It was after that that we were unable to pay all of our assessments, and therefore paid assessments on certain property in sufficient amount to provide funds for the payment of interest on outstanding bonds. I answered Mr. Gamble's question by stating that as long as we had funds with which to make payment of taxes and assessments, we paid the current assessments as they came due.

Plaintiff's Exhibits P-50 and P-51 were reports made directly to R. A. Long, as Chairman of the Board of the Long-Bell Lumber Company, and copies went to the rest of us. This office did not send copies of these reports to Halsey, Stuart & Company. The Longview Company or the Longview Suburban Company or the Long-Bell Lumber Company, so far as I know, did not send copies, except to officials or others connected with the Company. We might have been asked to send a copy, or something like that, but I have no recollection of it. I think we quit making these monthly reports of sales along the middle part of the year 1928.

Re-direct Examination of Mr. Morris by Mr. Gamble.

So far as our sales were concerned, the prices of Douglas fir were fairly on a level during the years 1926, 1927 and 1928. Our dollar sales were not as much in 1928 as in 1926, due to a material decline in volume—I imagine people were not buying as much lumber. I am pretty sure the Long-Bell Lumber Company passed the dividend on its stock in 1928. I was referring to the price we received, not the money we made, when answering the question concerning the maintenance of fairly level prices on fir.

Recross Examination of Mr. Morris by Mr. Johnston.

Q. As a matter of fact, your cut in 1927 was higher than it was in 1926 by some four million feet, was it not?

A. I do not remember those figures. We started our East mill in May of 1926.

I would consider a material decline to be, oh, twenty-five per cent. My recollection is that there was a falling off in the bulk of manufacture and sales volume, reduced production and reduced sales. We produced more lumber in 1923 than we did in 1926 and produced about six million feet less in 1928 than in 1927 and about six million feet less in 1929 than in 1928, talking just about the production of the Long-Bell Lumber mill here.

Mr. Howland: At this time, if the Court please, the plaintiff offers and reads in evidence the deposition of W. C. Brubaker, taken before Ruth Lefebre, a Notary Public in and for Multnomah County, Oregon, at Portland, Oregon, on the 6th day of June, 1938, and I might state that this witness identified certain airplane photographs of the City of Longview, Washington, some of which were taken in 1929 and some of which were taken in the month of May, 1930, or in the summer of 1930.

As the various photographs are identified by the witness I would suggest that it would be proper and I would like the privilege of passing the photographs to the jury for examination as the deposition is read.

I make this suggestion in view of the fact that no objections to these photographs were taken by counsel at the time of taking the deposition.

Mr. Johnston: I object to their materiality and competency, and relevancy in this case. I am not objecting to the way the man took the photographs.

The Court: You may start reading.

Mr. Johnston: They are not material to any issue in

this case. I don't know the practice which counsel suggests. It is rather an unusual one. It seems to me if we are going to pass out Exhibits we better pass out all Exhibits.

The Court: What is the practice?

Mr. Johnston: I understand, my understanding has always been that the Exhibits go to the jury when they go to the jury room. I don't know that they are ever passed around in advance; I have never seen that done.

The Court: There is no objection to them being passed around during the trial, is there?

Mr. Johnston: I don't know, your Honor, whether that practice has ever been passed on.

Mr. Herriott: I don't know that there is any regular practice. It is pretty much a matter of whatever the particular situation seems to make desirable. I know I frequently had Exhibits in the hands of the jury while a witness is on the stand.

The Court: I have seen it done both ways.

Mr. Johnston: I have never seen it done that way, but may be I am wrong about that.

The Court: I have seen it both ways.

W. C. BRUBAKER, produced as a witness on behalf of plaintiff, having been first duly sworn, was examined and testified as follows (by deposition):

Direct Examination by Mr. Howland.

My name is W. C. Brubaker. My address is 412 McKay Building, Portland, and I am in the business of making aerial surveys or photographs. I operate a business under the name of Brubaker Aerial Surveys, taking aerial pictures exclusively. I have been located in Portland since 1920, when I began that work. We have always kept a record of the year and date when the pictures were taken, but nearly two years ago we had a disastrous fire which destroyed everything. Prior to that date, I recall that Mr. Howland purchased from me a number of prints of the City of Longview. I do not have the original negatives from which those pictures were taken nor the record-book, but I know from the number we put on the pictures the year, and very close to the month, of the taking of the photographs. The first two figures denote the year.

I recall making aerial surveys of the City of Longview long prior to and subsequent to 1930.

Q. Mr. Brubaker, I will now hand you a photograph which has been marked by the reporter as "Plaintiff's Exhibit 1" for identification. I notice also on the face of the photograph the numbers "9 157," and the notation "Brubaker Aerial Surveys, Portland, Oregon."

Mr. Howland (Reading): "Will you examine Exhibit 1 and tell us whether that photograph was taken by you?"

Mr. Johnston: If the Court please, I would like to interpose my objection to the competency, materiality and relevancy of these photographs of the City of Longview. They do not go to any alleged misrepresentation upon which the plaintiff has a right to rely in this case.

The Court: Are you going to offer them in evidence?

Mr. Howland: We offered them in; they are all identified.

The Court: The objection is the same as to all?

Mr. Johnston: Yes.

The Court: The same ruling. They will be admitted.

Mr. Gamble: For the record purposes we offer in evidence Plaintiff's Exhibit 1.

Mr. Johnston: Shall my same objection go to each one, and I will not bother repeating, your Honor, and taking the time of the Court?

The Court: Yes.

(PLAINTIFF'S EXHIBITS 1 to 16 offered and admitted in evidence over objection of counsel for defendant to their materiality, relevancy and competency.)

The Witness: Exhibit No. 1 was taken by me in 1929. The numeral "9" stands for that year and the figure "157" shows that it is the 157th picture taken that year. At the time that picture was taken my camera was pointing a little northeast. The building and street which appear on the left-hand side of the photograph is the principal business street. I believe they call it Commerce.

Q. Yes. I will now hand you, Mr. Brubaker, a photograph marked by our reporter as "Exhibit No. 2" for identification, and it bears the notation, in the lower right-hand corner on the face of the exhibit, "9 159," "Brubaker Aerial Surveys, Portland, Oregon." Can you tell us whether that is a photograph taken by you?

Mr. Johnston: The same objection.

A. Yes, sir, that was taken by me, on approximately the same day as Exhibit No. 1. In Exhibit No. 2 the structures that appear in the foreground would be a general view of the Long-Bell Lumber Company plant, looking west or northwest downstream on the Columbia and im-

mediately west of the oil tanks in the background of the picture are the plants of the Weyerhaeuser Timber Company. The hill in the center background of the picture is referred to locally as Mt. Solo. Exhibits 1 and 2 were taken by me at Longview in the spring of the year. I would have to guess at the month, probably April. It would be fairly early in the year's work.

Q. Now, I wish you would next examine the photograph marked "Plaintiff's Exhibit 3" for identification, which also bears the notation "30 467 Brubaker Aerial Surveys, Portland, Oregon." Tell us whether that is one of the photographs made by you.

A. Yes, sir.

Mr. Gamble: We offer in evidence PLAINTIFF'S EXHIBIT 3.

Mr. Johnston: The same objection.

The Court: The same objection and the same ruling.

The Witness: That photograph was taken in the year 1930, at Longview, along the middle of the year, July or August, in the summer, it being the 467th picture taken that year. That shows the northern part of the city, with the camera pointing in a northwesterly direction. In the lower left-hand corner of the photograph is the Monticello Hotel, and the yards and gardens around it. Just in front of it are the gardens or civic center. It appears to me that this photograph was taken looking in a northwesterly direction. I am not so familiar with the exact directions of the streets. The dark portion on the right-hand upper part of the photograph represents the hills which lie to the north and west of the city. This photograph is a correct representation of the conditions as they existed at the time it was taken.

Q. I will next hand you a photograph marked "Plaintiff's Exhibit 4" for identification, and ask you—also identified on the face of the photograph with the numbers "30 473 Brubaker Aerial Surveys, Portland, Oregon." Was that "Exhibit 4" a photograph taken by you?

A. Yes, sir.

Mr. Gamble: We offer in evidence PLAINTIFF'S EXHIBIT 4.

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: That photograph was probably taken within a minute or two of Exhibit 3. It shows the civic center, the Monticello Hotel and quite a bit of the residen-

tial district in the northern part of the town and the hills and flat land west and north of the city.

Exhibits 3 and 4 cover nearly the same territory. Plaintiff's Exhibit 5, bearing on its face the numerals "30 475" and the legend "Brubaker Aerial Surveys, Portland, Oregon" was a photograph taken by me.

Mr. Gamble: We offer in evidence PLAINTIFF'S EXHIBIT 5.

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: This was taken on the same day as Exhibit 4. The camera was pointed north and a little west and shows the part of the residential section known as St. Helens Addition and shows the better residential addition further over and the hills to the north; also the civic center, the Monticello Hotel and a couple of big institutions which I presume are their hospital or high school, I am not sure just what. In the center of the picture appears the ornamental lake, Lake Sacajawea.

Plaintiff's Exhibit 6, bearing the numerals "30 477" and the legend "Brubaker Aerial Surveys, Portland, Oregon," was taken by me of Longview in the summer of 1930, the same day as the other exhibits.

Mr. Gamble: We offer in evidence PLAINTIFF'S EXHIBIT 6.

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: The camera was looking northeast and in the background is the Cowlitz River, which lies immediately east of Longview. The group of buildings in the center is the Monticello Hotel and civic center and in the foreground is the northwest side of the town, the upper-class residences, which lie between Lake Sacajawea and the Monticello Hotel.

Plaintiff's Exhibit 7, bearing the numerals "30 478" and the legend "Brubakar Aerial Surveys, Portland, Oregon," was taken by me in the summer of 1930, on the same flight as the preceding exhibit.

Mr. Gamble: We offer in evidence PLAINTIFF'S EXHIBIT 7.

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: We were over the residential district known as St. Helens Addition and looking northeast toward the Cowlitz River and the Town of Kelso in the distance.

In the foreground and to the left are the residences of St. Helens Addition and the east end of Lake Sacajawea.

Exhibit 8, bearing the numerals "30 479" and the legend "Brubaker Aerial Surveys, Portland, Oregon," was taken by me at Longview in the summer of 1930, on the same flight as those just preceding.

Mr. Gamble: We offer in evidence PLAINTIFF'S EXHIBIT 8.

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: We were over the northwest side of the city, its residential district. It shows a large school and the northern end of Lake Sacajawea and looking to the northeast the hills north of the city in the distance. I do not quite recognize the Cowlitz River in the extreme background on the right-hand side of the photograph.

Plaintiff's Exhibit 9, bearing the numerals "30 481" and the legend "Brubaker Aerial Surveys, Portland, Oregon," was taken by me in the summer of 1930, on the same flight as the preceding ones.

Mr. Gamble: Now, we offer in evidence, at this point, your Honor, PLAINTIFF'S EXHIBIT 9.

Mr. Johnston: Objected to for all the reasons previously stated.

The Court: The same ruling.

The Witness: The camera was looking almost west, down what is known as Broadway, over the northern end of the main business district, with the civic center and the Monticello Hotel in the upper central part of the photograph. Broadway, I believe, extends straight down from the civic center, with a little parking in the center. The main business street is shown at the left of Exhibit 9. Lake Sacajawea appears in the extreme background of the photograph and at the extreme upper corner is the same school shown on Plaintiff's Exhibit 8.

Plaintiff's Exhibit 10, bearing the numerals "30 482" and the legend "Brubaker Aerial Surveys, Portland, Oregon," was taken by me at Longview in the summer of 1930, on the same flight.

Mr. Gamble: We offer in evidence PLAINTIFF'S EXHIBIT 10.

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: I believe the camera was pointing northwest. In the foreground is the Cowlitz River and beyond

is a general view of the business district and the civic center of Longview, with Mount Solo in the left background.

The airplane at the time this photograph was made was on the east or Kelso side of the Cowlitz River.

Plaintiff's Exhibit 11, bearing the notation "30 483" and the legend "Brubaker Aerial Surveys, Portland, Oregon," was taken by me at the same time as the preceding exhibits.

Mr. Gamble: We offer in evidence at this time PLAINTIFF'S EXHIBIT 11.

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: The body of water appearing in the photograph is Lake Sacajawea and the camera is looking southeasterly, with the mills and the Columbia River in the distance. To the extreme left is the Longview Fibre Company and in the center is the Long-Bell Lumber Company.

The figure "1" on the photograph "Exhibit 11" shows the plants of the Long-Bell Lumber Company, and the Longview Fibre Company is at the extreme left.

Plaintiff's Exhibit 12, bearing the numerals "30 489" and the legend "Brubaker Aerial Surveys, Portland, Oregon," was taken by me at the same time as the preceding photographs.

Mr. Gamble: We offer in evidence PLAINTIFF'S EXHIBIT 12.

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: The camera and the plane were over the Columbia River, west of the Longview Bridge, and pointing east and a little north, showing the log booms and bank of the river in the foreground. The approach to the Longview Bridge, which extends across the Columbia River in a substantially northerly-and-southerly direction, is across the center of the picture and the Long-Bell Lumber Company is in the upper half of the picture, with the Columbia River along the right-hand side.

"Plaintiff's Exhibit 13, which bears the numerals "30 491" and the legend "Brubaker, Aerial Surveys, Portland, Oregon," was taken by me at the same time as the preceding exhibits.

Mr. Gamble: We offer in evidence PLAINTIFF'S EXHIBIT 13.

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: The camera was located in the southwest corner of the city, showing in the foreground the general

lay-out of the Weyerhaeuser Lumber Company plants, with the St. Helen's residential district in the upper center and the Cowlitz River and hills in the distance.

Plaintiff's Exhibit 14, bearing the numerals "32 031" and the legend "Brubaker Aerial Surveys, Portland, Oregon," was taken by me very early in the spring of 1932.

Mr. Gamble: We offer in evidence PLAINTIFF'S EXHIBIT 14.

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: We were flying just southeast of the main business district of Longview and the photo shows the main business blocks or streets, with the Monticello Hotel and civic center to the left of the picture. The upper portion of the photograph shows the hill and timber to the north of the City of Longview.

Plaintiff's Exhibit 15, bearing the numerals "32 031" and the legend "Brubaker Aerial Surveys, Portland, Oregon," was taken by me in the early spring of 1932.

Mr. Gamble: We offer in evidence PLAINTIFF'S EXHIBIT 15.

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: It shows in the immediate foreground the log booms of the Weyerhaeuser Timber Company and the general view of their lumber mills, and looking on north shows the extreme western side of the City of Longview, with the hills in the distance. The camera was pointing almost north and we were flying over the Columbia River west of the Longview Bridge and almost in front of the Weyerhaeuser Lumber mills.

Plaintiff's Exhibit 16 for identification, which bears the numerals "32 033" and the legend "Brubaker Aerial Surveys, Portland, Oregon," was taken by me at the same time as Exhibits 14 and 15.

Mr. Gamble: We offer in evidence PLAINTIFF'S EXHIBIT 16.

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: The plane was just over the river bank west of the Weyerhaeuser plant and shows their paper and pulp mill in the immediate foreground, with the lumber mills just above, and in the upper distance the Long-Bell mills. The camera was pointed almost east and in the upper right-hand portion is about half of the Longview Interstate Bridge, across the Columbia River. The

industrial plants located in the upper portion of the picture are the mills of the Long-Bell Lumber Company. I took all of the photographs identified as Plaintiff's Exhibits 1 to 16, inclusive. They were developed in my plant and the prints were made from the negatives by us. They are true reproductions of what was reported on the negatives, without any retouching.

ARTHUR HENRY PAINE, called as a witness on behalf of plaintiff, being first duly sworn, testified as follows (by deposition):

Direct Examination by Mr. Howland.

My name is Arthur Henry Paine and I am a photographer in Longview, having resided there since March, 1924. When I came here it was largely in the construction stage and I was here during the period in which the Long-Bell Lumber Company and its subsidiaries laid out pavements, installed sewers and matters of that sort. I remember that in March, 1936, I received a call from one of the attorneys for the plaintiff in this case, who requested that I take certain photographs at locations in the City of Longview. The photograph, "Plaintiff's Exhibit P-19," having on its face a white numeral "1" and the figure "2623", was one of the photographs taken by me. I brought the negatives with me so I can check up on it.

Mr. Gamble: We offer in evidence PLAINTIFF'S EXHIBIT P-19.

Mr. Johnston: We object to it on all the grounds stated as to the other photographs, not competent, relevant or material; upon the further ground that this appears to be taken in 1936, which was after this litigation.

The Court: Taken of Longview?

Mr. Gamble: Yes, sir.

Mr. Johnston: Taken after the suit was instituted.

The Court: It may be admitted, subject to objection.

The Witness: That photograph was taken on March 15, 1936, at 9:45 a. m., from the intersection of Nichols Boulevard and Louisiana Way, north of the high school. Mount Solo is in the distance.

Plaintiff's Exhibit 20, bearing on its face the figures "2" and "2624", was taken on the same day, at about ten o'clock.

Mr Gamble: We offer in evidence PLAINTIFF'S EXHIBIT 20.

Mr. Johnston: Objected to for the reasons given to the prior exhibit.

The Court: The same ruling.

The Witness: That is a northwest view from the track, three hundred feet east of the highway, which is east of Columbia Valley Gardens, located on what is known as the Weyerhaeuser or Columbia & Cowlitz Railroad right-of-way, in the northwest part of the City of Longview.

Plaintiff's Exhibit 21, bearing the numerals "3/2625", was taken looking west of the Number 2 view.

Mr. Gamble: I offer in evidence PLAINTIFF'S EXHIBIT 21.

Mr. Johnston: Objected to for the reasons heretofore stated.

The Court: The same ruling.

The Witness: The camera was in the same place, looking west and showing buildings in the Columbia Valley Gardens.

Plaintiff's Exhibit 22, bearing the numerals "4/2626", was taken on March 15, 1936, at 10:15 a. m.

Mr. Gamble: I offer in evidence PLAINTIFF'S EXHIBIT 22.

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: That was taken from the northeast corner of Thirty-second Avenue and Colorado Way, looking southwest.

Plaintiff's Exhibit 2, bearing the numerals "5/2627", was taken the same day.

Mr. Gamble: I offer in evidence PLAINTIFF'S EXHIBIT 23.

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: This was taken at the same time and place as my picture No. 4, but the camera was turned around, looking south and southeast.

Plaintiff's Exhibit 24, bearing the numerals "6/2628", was taken the same day, at 10:30 o'clock.

Mr. Gamble: I offer in evidence PLAINTIFF'S EXHIBIT 24.

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: The camera was placed about four hundred feet south of Alabama Way, down in Highlands Addition, pointing north and northeast and just showing St. Helens School.

Plaintiff's Exhibit 25, bearing the numerals "7/2629", was taken the same day, at 10:45.

Mr. Gamble: We offer in evidence PLAINTIFF'S EXHIBIT 25.

Mr. Johnston: Objected to for the reasons previously stated.

The Court: The same ruling.

The Witness: The view is westerly and southwesterly from the substation on Columbia Way. The highway at the right is Columbia Way.

Plaintiff's Exhibit 26, bearing the numerals "8/2630", is one of my photographs, taken the same day, at 11:00 o'clock.

Mr. Gamble: We offer in evidence PLAINTIFF'S EXHIBIT 26.

Mr. Johnston: Objected to for the reasons previously stated.

The Court: The same ruling.

The Witness: It was taken from fifty feet north of Douglas, looking southeast. The territory is adjacent to Commerce Avenue. On one side is the Superservice station, and this land lies between the service station and this section, which is the colored section.

Plaintiff's Exhibit 27, bearing the numerals "9/2631", was taken at 11:30 on the same day.

Mr. Gamble: We offer in evidence PLAINTIFF'S EXHIBIT 27.

Mr. Johnston: Objected to for all of the reasons previously stated.

The Court: The same ruling.

The Witness: This was taken from the stile at the fence line of Seventh and Florida, in a northeasterly direction, with the depot in the distance.

Plaintiff's Exhibit 28, which bears the numerals "10/2632", was taken by me.

Mr. Gamble: We offer in evidence PLAINTIFF'S EXHIBIT 28.

Mr. Johnston: Objected to for all of the reasons stated.

The Court: The same ruling.

The Witness: This was taken at 12:00 o'clock noon, on the dike at the Hudson Street line, looking north-northwest. The building in the left of the photograph is the rear of the railroad station and this shows the territory lying between the dike and the L., P. & N. Railroad tracks, as they were originally located.

Plaintiff's Exhibit 29, bearing the numerals "11/2633", was taken by me.

Mr. Gamble: We offer in evidence PLAINTIFF'S EXHIBIT 29.

Mr. Johnston: Objected to for all of the reasons previously stated.

The Court: The same ruling.

The Witness: That was taken March 15, 1936, at 12:20 p. m., from the southwest corner of Eleventh and Maple, looking northeast. The Longview City Laundry is in the extreme right of that photo.

Plaintiff's Exhibit 30, bearing the numerals "12/2634," was taken by me.

Mr. Gamble: We offer in evidence PLAINTIFF'S EXHIBIT 30.

Mr. Johnston: Objected to for all of the reasons previously stated.

The Court: The same ruling.

The Witness: That was taken at the same time and place as the previous one, in the same position, just swung around on the tripod. The laundry building appears in the left-hand of this photograph and in the right-hand of the other photograph. The stucco apartment building which appears at the right is known as the Coronado Apartments, and the old L., P. & N. depot appears in the center of the photograph.

Plaintiff's Exhibit 31, bearing the numerals "13/2635", was taken by me.

Mr. Gamble: We offer in evidence PLAINTIFF'S EXHIBIT 31.

Mr. Johnston: Objected to for all of the reasons previously stated.

The Court: The same ruling.

The Witness: That was taken March 15, 1936, at 12:35 p. m., at Olympia Way, 100 feet east of the filter station of the Washington Gas & Electric Company, looking northeast.

That shows generally the territory lying between Ocean Beach Highway and the city library, and the vacant tract lying north of the civic center. Kelso appears in the background.

Plaintiff's Exhibit 32, bearing the numerals "15/2637", is one of mine.

Mr. Gamble: We offer in evidence PLAINTIFF'S EXHIBIT 32.

Mr. Johnston: Objected to for all of the reasons previously stated.

The Court: The same ruling.

The Witness: That was taken on March 15, 1936, at

1:45 o'clock. The camera was located on Douglas, near the Y. M. C. A., looking north. In the background are the Monticello Hotel and the bank building. The buildings that appear at the right side of the photograph are located along Commerce Avenue and are the two Superservice stations.

These exhibits, Nos. 19 to 32 inclusive, were developed by me and I made the prints, which were not retouched in any way.

Cross-Examination of Mr. Paine by Mr. Johnston.

I took these photographs upon the instructions of counsel for plaintiff in this case. I could have taken many more pictures, if I took all the vacant property I could find in the City of Longview. I did not take any buildings except as they appear in the distance. I was seeking to photograph vacant property; that was the object of my making these photographs and that was the instruction I received from the plaintiff. I did not take photographs of any developed areas, such as the business center or the residence sections, nor the civic center, nor any of those areas where there were a substantial number of buildings.

Mr. Johnston: I also object to the competency, materiality and relevancy of these photographs, and likewise to the time at which they were taken, as not having any bearing upon the issues in this case.

Mr. Howland: If the Court please, we desire at this time to offer and read in evidence a stipulation entered into at Longview, Washington, on September 28, 1938, by counsel for both parties in this case, which is on file in the office of the Clerk of this Court as a stipulation regarding the deposition of Marshall Stennerson, reading as follows:

"It is stipulated and agreed by and between the parties hereto that Marshall Stenerson, if called as a witness would testify that in March of 1936 he was a resident of Longview, Washington; that he had had two years of college engineering, and also two years of engineering practice; that at the request of the plaintiff he prepared Exhibits P-18 and P-33, as well as placed the outlines of the Cowlitz County Consolidated Diking District Number One upon Exhibit P-17, and that he correctly and accurately recorded on said exhibits the information indicated by the legends thereon."

In connection with this stipulation the Plaintiff offers in evidence the plat identified as Exhibit P-33, which is now before the jury.

Mr. Johnston: Objected to on the ground of its competency, materiality and relevancy, not as to the accuracy of the preparation.

I will call attention to the fact that it was prepared in 1936; that there is no basis in this case for the introduction of such a plat in evidence. There is no representation alleged, or which can be relied upon by the plaintiff in this case, on which such a map would be competent, material or relevant evidence. Therefore, I object to the introduction of the plat in evidence.

Mr. Howland: The map shows upon its face, if the Court please, the streets which are paved, the location of sewers, water lines, water mains, and it shows, colored in red, the lots or parcels of land upon which improvements are located and the legend is explanatory of those items only.

(PLAINTIFF'S EXHIBIT P-33 offered and admitted in evidence over objections of counsel for defendant.)

"It is stipulated by and between the parties, by their respective counsel, that Defendant's Exhibit D-28 for identification, being the report of the State Auditor on the City of Longview, Cowlitz County, Washington, covering the period from May 1, 1930 to April 30, 1931, is a true and correct copy of the original of said report on file in the office of the city clerk of the City of Longview, Washington, and that this report was completed by the State Auditor and a copy thereof submitted to the city clerk of Longview sometime during the month of July, 1931."

W. S. JACOBS, being first duly sworn, testified as follows (by deposition):

Direct Examination by Mr. Howland.

My name is W. S. Jacobs and I reside in Kelso, Washington, where I am employed in the office of the County Assessor of Cowlitz County, Washington. A list of properties included within a certain tax deed issued by H. D. Renner, County Treasurer of Cowlitz County, on May 10, 1938, was furnished to the County Assessor or his office here in Kelso.

Mr. Howland: At this time the plaintiff offers in evidence Exhibit P-47, being a certified copy of the tax deed issued by H. D. Renner, County Treasurer of Cowlitz County, on May 10, 1938.

Mr. Johnston: I object to it. I objected to it at that

time, and I object now on the ground that tax deed is utterly incompetent, irrelevant and immaterial to any issue in this case. It is the deed issued in 1938, if the Court please, purporting to be a tax deed as to certain properties that were sold for taxes by the County of Cowlitz, and I submit it has no relevancy to any issue in this case. It can not be competent to establish any facts.

The Court: What is your answer to that?

Mr. Gamble: The answer to that is, your Honor, that under the authorities which I brought to your attention the other day, we are entitled to show subsequent events in connectioin with this transaction. One of the subsequent events is that the County foreclosed, for general taxes, upon great areas of this property within the limits of Longview. It goes to the question of the intrinsic value of these bonds in 1930, when they were bought.

Mr. Johnston: I don't want to argue the question with the Court, but it seems to me so obvious upon its face that if that were true you would have the most astounding situation that after going through a depression in the City of Chicago, as your Honor and I have known it in the real estate market, that you could put in evidence the fact that there had been tremendous areas of property in Chicago, lots sold for taxes in 1938, and that that was evidence of the fact as to their value in 1930, which I submit is, just can not be supported by any law anywhere at any time in any case.

Mr. Howland: If the Court please, the case of *Hotaling* v. *A. B. Leach & Company*, in the New York Court of Appeals, was an action for fraud in the sale of securities. It appeared that a Trust Deed had been given secured by the properties of an oil corporation, and that Trust Deed had been foreclosed and a very nominal amount had been realized for the bondholders.

Objections were made to the introduction of the testimony as to the amount received as the result of the foreclosure proceedings, and it was held that the testimony was material and relevant as bearing upon the value of the securities:

In this case the tax deed is offered for the purpose of showing that, upon all of the property in the City of Longview, upon which the assessments have not been paid to date, that tax lien has been foreclosed, and that the former owner has lost title, and that these Local Improvement District Bonds have been wiped out by virtue of that transaction.

That is the basis of the offer which we are making of the tax deed and the testimony in connection with it.

Mr. Johnston: I pointed out the Hotaling case is based on a rule of damages which is fully explained in subsequent New York cases. It is not the rule of damages here and can not be contended to be the rule of damages.

There you have a different rule of damages that applied in New York, which is not the rule here, which I stated to the Court, which is the difference in value in 1930 of these bonds as they were, their actual value and the value they would have had if the alleged misrepresentations had been true, as made. They can not go into questions existing in 1938.

Mr. Herriott: If I may step from the witness chair for a moment, your Honor, it seems to me there is another theory upon which evidence of this kind is not only admissible, but almost essential, in proof of the Plaintiff's case.

I apprehend, irrespective of what value some expert might place on these bonds as of the date when they were sold, that the burden is on the plaintiff in this case, in view of the fact that payment of these depends on the payment of the assessments, to show that there is no likelihood of there being any recovery on these bonds, on the property which has been foreclosed, not only to corroborate the evidence as to their value as of 1930, but to show there is no possibility of an offset, and I think the burden is on the plaintiff of establishing that fact. So, the evidence becomes not only material but essential and necessary, and there might well be a failure of proof without something of this sort. I think clearly it is admissible.

The Court: I will overrule the objection.

(PLAINTIFF'S EXHIBIT P-47 offered and admitted in evidence over objection of counsel for defendant.)

The Witness: I did the work on Plaintiff's Exhibit P-48 by inserting the colored portions, which are the lots taken over by the county pursuant to a tax deed issued by the County Treasurer in May, 1938. I got the description of the lots from the tax deed furnished to the County Assessor by the Treasurer's Office of Cowlitz County, Washington. The red coloring on Exhibit P-48, to the best of my knowledge, shows the various lots, tracts and parcels of land the desriptions of which are included in the tax deed and tax list executed in May, 1938.

Cross-Examination of Mr. Jacobs by Mr. Johnston.

Mr. Johnston: I will read the cross examination without waiving my objection to the entire evidence.

The Witness: When I say "taken over by the county" I mean covered by the tax deed introduced into evidence. My understanding is that the parcels are in the possession of the county at the present time. The county of Cowlitz has received this deed, Plaintiff's Exhibit P-47. That is all that I know that is done with reference to the property, so that when I use the words "taken over," I mean that a tax deed to the parcels colored in red has been given to the County of Cowlitz.

I prepared this map at Mr. Howland's request. It is taken from the regular records or maps kept by the County Assessor of Cowlitz County. This Exhibit P-48 was something prepared in connection with this law-suit—not something I prepared for use for the Assessor or any other county official. I think that by taking the descriptions shown on the tax deed, Plaintiff's Exhibit P-47, we were able to identify all of the parcels on the map that are described in the tax deed. There is only supposed to be one color—red. Part of Lake Sacajawea and the land surrounding it was a public park at one time, owned by the Longview Company, and also the civic center. I do not know whether the library property is covered or not. I think Block 127 is the Library Block. I think the taxes for which sales were made were delinquent in 1927.

Mr. Howland: No, 1931.

The Witness: That is right, 1931. That is six years. I could not say whether the sale was had for just one year's taxes. I cannot answer whether the sale was for general or special taxes; I do not know. I had nothing to do with that end of the work. That is not part of my job in the County Assessor's office. I have just taken the deed as it appears on its face and colored the lots as they are described in the deed, Exhibit P-47.

Redirect Examination of Mr. Jacobs by Mr. Howland.

I do not know whether the county, as a matter of fact, has already sold some of the property that is shown colored in red. What I did in the preparation of Exhibit P-48 was to color in red on the map descriptions of lots and parcels of land which appear in the tax deed itself.

That part of Lake Sacajawea lying between Washington Way on the map and Fifteenth Avenue, which is colored in red, was included in the tax deed.

Mr. Gamble: The map has not been offered. We desire at this time to offer in evidence in connection with the deposition of W. S. Jacobs the map identified as Exhibit P-48.

Mr. Johnston: I object to that for all of the reasons expressly stated in my objection to the tax deed, on the same grounds.

(PLAINTIFF'S EXHIBIT P-48 offered and admitted in evidence over objection of counsel for defendant.)

MRS. FAYE SCOTT WITT, called on behalf of plaintiff, having been first duly sworn, testified as follows (by deposition):

Direct Examination by Mr. Howland.

My official position in connection with the City of Longview, Washington, is City Treasurer, which I have been since sometime in the year 1933. I have in my office the assessment rolls as certified to me for collection, showing assessments upon each and every lot and parcel of land within the district. I also have records of maturity of bonds and numbers of bonds issued and outstanding in various Local Improvement Districts. It is part of the City Treasurer's duties to disburse the funds which are received in connection with the various Local Improvement Districts. I have in my office a record showing the full number of bonds originally issued, with the date of issuance for each Local Improvement District shown.

In Local Improvement District Number One there were issued originally, on September 25, 1925, $426,815.81 in bonds, bearing interest coupons at six per cent, payable September 25 and March 25 of each year. All the bonds matured on September 25, 1937 but were subject to be called in advance of that date. The bonds by their terms were payable from the funds of the various districts realized by the collection of the assessments in each improvement district. In District Number One the installment was due each year on August 3, beginning with 1926. They were divided into ten equal installments so that each year the amount paid on principal should have been $42,600. In other words, the assessments which were left were

payable in ten equal installments, due on August 3 annually for ten years. The assessments also drew interest at six per cent, so that in the scheme of these various Local Improvement Districts, had the assessments all been paid, there would have been a fund sufficient to pay interest and to retire one-tenth of the face amount of the bonds outstanding each year. Had all of the assessments and interest installments been paid promptly, the bonds would have been paid and retired at the end of ten years. There was even additional provision for interest charged on the installment becoming delinquent, and penalties provided in accordance with the Washington statute.

We have records in our office showing the number of bonds outstanding as of June 1, 1930. There were 258 one-thousand-dollar bonds out of the original 427. The first bond took up the odd amount of $815.81.

In District #1, I think all of the assessments of the Long-Bell Lumber Company and its subsidiaries were paid in the years 1927, 1928, 1929 and 1930.

Q. What can you tell us as to the number of bonds outstanding in L.I.D. District Number One of the city of Longview, Washington, on the first of June, 1938?

Mr. Johnston: I object, if the Court please, to this line of inquiry. I don't think it is competent, relevant or material to any question of damages presented in this case.

The Court: What is the question?

Mr. Johnston: It is going into the question of the amount of bonds now outstanding.

The Court: I will overrule the objection.

Mr. Johnston: May I have my objection show without repeating it every time?

The Court: Yes.

A. 213 bonds were outstanding at that time in the total amount of $213,000.00.

At the maturity of the bonds on September 25, 1937 there were no funds available to take up those remaining 213 bonds in L. I. D. Number One. As of June 1 there was $3,105.24 in my hands, as City Treasurer, in connection with the funds of L. I. D. Number One This has not been disbursed. The last payment of coupon interest on the L. I. D. Number One bonds was made December 3, 1937. That paid all the interest coupons on all outstanding bonds for interest that was due on September 25, 1936, so that there have been no interest coupons paid beyond that date. Those that were due in March of 1937 and September of 1937 have not been paid. The bonds

that were paid off were retired in numerical order so that when funds were available in the District fund they were applied, after the payment of coupons then due, for redemption or paying off of bonds commencing with Bond No. One for the District. When I came into office, the 1st of January, 1933, the Long-Bell interests had already been unable to pay some of the installments on property owned by them which they had paid pretty regularly up to and including the year 1930.

It was the custom at that time, when it was time to pay interest on the bonds, if the money received from the individual owners did not make the fund sufficient to meet the interest payments, then the Long-Bell Lumber Company made note of that and paid their installments on certain pieces of property in an amount sufficient to make up the interest. The Long-Bell Lumber Company and its subsidiaries did not pay assessments sufficient to enable us to take up the ten per cent of the principal amount of the bonds in the years 1931, 1932, 1933 and subsequent.

I also have in my office records with respect to the bonds issued in Local Improvement District Number 2 of the City of Longview. These bonds were issued September 25, 1925, in the original amount of $235,133.96. These bonds were divided into one-thousand-dollar denominations and the one odd bond in the same manner as the bonds of District Number One. These bonds bore interest at six per cent and were payable out of installments of assessments levied on property in District Number Two in the same manner as District Number One. The maturity date of these bonds was September 25, 1937, and the installments of assessments were due August 3. Interest coupons on the bonds were due September 25 and March 25.

Mr. Johnston: I make the same objection to this line of inquiry.

The Court: The same ruling.

The Witness: On June 1, 1930 there were 137 one-thousand-dollar bonds outstanding. The amount outstanding on June 1, 1938 was one hundred and six bonds, so that there were $106,000.00 of these bonds that were in default on June 1, 1938, collections having been insufficient to meet the maturity of the bonds.

On June 1, 1938 there was $228.85 in the L. I. D. fund. The last payment on District Number Two was made March 9, 1936 and the last interest which was due was due September 25, 1935. Two of the interest coupons after September 25, 1935, together with the principal

amount of the bonds to the extent of $106,000.00, were all in default. My testimony with reference to the payments made by the Long-Bell interests in District Number One is true also with reference to District Number Two. The last payment made by the Long-Bell interests in District Number Two was made about November, 1935. Prior to that time they had stopped paying. I think it was January 1, 1933 that they advised me that they would make no more payments. Before that for a time they had been following the custom of making payments just sufficient to enable me to take up all the interest coupons due on the coupon dates without retiring any part of the principal.

Local Improvement District Number Three was, as of October 15, 1925, in the original amount of $88,740.12. The bonds bear six per cent interest and mature October 15, 1937, and carry the same optional payment privilege on the part of the city of calling or redeeming the entire issue in advance of maturity. The interest was due October 15, and April 15, with the assessment payment due August 25, annually. As in all other Districts, there were ten annual installments in District Number Three.

Mr. Johnston: The same objection.

The Court: The same ruling.

The Witness: There were $36,000.00 of those bonds outstanding on June 1, 1930, so that those bonds had been reduced from eighty-eight thousand to thirty-six thousand between the issue date of October 1925 and the first of June, 1930. On the first of June, 1938 Fourteen Thousand Dollars in those bonds was outstanding. The last installment of interest paid on the bonds of District Number Three was made October 3, 1936, which paid interest due October 15, 1936. We have One Dollar and Twenty-three Cents on hand in the District fund now. The money for payment was sent to the fiscal agent for the State of Washington in New York City.

The bonds of District Number Four were originally issued October 15, 1925, in an amount of $239,534.26, bearing six per cent interest and maturing October 15, 1937. Interest payments were due October 1 and April 15, and assessment installments were due August 25, annually, all for ten years.

Q. What number of bonds were outstanding in that District on June 1, 1930?

Mr. Johnston: The same objection.

The Court: The same ruling.

A. There were 131 bonds, in the amount of $1,000.00

each. On June 1, 1938 there were 73 one-thousand-dollar bonds outstanding in District Number Four and on that date we had $1,779.65 in the funds of that District. The last interest coupon was paid on October 3, 1936, paying interest due October 15, 1936 by remitting the funds to the agency at which the bonds were made payable.

The bonds of District Number Five were issued October 15, 1925, in an original amount of $210,679.44. The bonds bore six per cent interest, with the payments due October 15 and April 15, maturity date October 15, 1937, with assessment installments due August 25, annually, it being a ten-year plan. On June 1, 1930 ninety-four bonds were outstanding and on June 1, 1938 sixty-one bonds were outstanding, in the sum of $1,000 each. The amount on hand in the District fund as of that date was $1,087.47. The last interest payment was made November 30, 1935, which was a payment in advance, and would not have been due until April 15, 1936. That was the occasion when the Long-Bell interests made a substantial payment of installments on selected property which they designated and which they directed the City Treasurer to apply in complete satisfaction of certain of the assessment obligations against certain of their properties. So in District Number Five there is now in default $61,000.00 of principal, plus interest on the bonds since the fifteenth of April, 1936.

In Number Six the issue was dated October 15, 1925, in an original amount of $108,315.02, the bonds bearing six per cent interest, to mature the fifteenth of October, 1937, with interest payments October 15 and April 15, and installments on assessments due on August 25. On June 1, 1930 there were sixty-three bonds, and on June 1, 1938 there were thirty-seven bonds, outstanding in the amount of $1,000.00 each, with the funds on hand $418.08. The last payment of interest was made October 6, 1937, which paid all interest coupons through October 15, 1937 and which, by the way, is the last interest coupon on Number Six. In other words, the interest is entirely paid in that District, but thirty-seven bonds are in default in principal.

The issue on District Number Seven was dated January 23, 1926, in an original amount of $116,870.08. These bonds bear six per cent interest and mature January 23, 1938. Interest payments are due on January 23 and July 23, and installments on assessments on December 1, annually. On June 1, 1930 there were seventy-three bonds

outstanding, of $1,000 denomination, and on June 1, 1938 sixty-one bonds in the same denomination. The sums on hand as of June 1, 1938 were $341.03. The last payment of interest was made March 10, 1936, which paid interest that was due January 23, 1936.

District Number Eight was issued December 15, 1925, in the original amount of $13,598.20. Bonds matured December 15, 1936, with interest payments on December 15 and June 15 and installments on assessments due October 15. June 1, 1930 there were outstanding eight bonds, in the amount of $8,000.00, and on June 1, 1938 there were six bonds, in the sum of $6,000.00. The funds on hand on June 1, 1938 were $126.18. The last installment of interest was made December 4, 1936, to pay interest which would be due December 15, 1936.

Number Nine was issued December 15, 1925, in the original amount of $4,261.07. The date of maturity was December 15, 1937, with interest payments due December 15 and June 15 and installments on assessments dated October 14. On the first of June, 1930 there were two bonds outstanding, which were later called, so that on the first of June, 1938 there were no bonds outstanding for District Number Nine. It was a very small District and constituted sidewalk improvements and paving. There is in that fund at present $510.10, and against that are a number of outstanding credits to property-owners for refund which have not been demanded as yet. That is one of the three Local Improvement Districts in the City of Longview which is paid out.

District Number Ten was dated December 15, 1925, issued in an original amount of $11,344.52. The date of maturity was October 15, 1937, with interest payable December 15 and June 15 and installments on assessments due October 28. On the first of June, 1930 there were five bonds outstanding, in the amount of $5,000.00. On the first of June, 1938 there are four bonds outstanding, in the amount of $4,000.00. The funds on hand show in the red $102.95. I had sent the money in to New York for redemption in interest coupons and had not taken into consideration some refunds demanded. The last payment made on interest was on December 14, 1936, which was the payment due December 15, 1936.

District Number Eleven was issued May 27, 1926, in the original amount of $908,699.57. The maturity date was May 27, 1938 and interest was due May 27 and November 27, with installments on assessments due April 5, annually. On June 1, 1930 there were six hundred

and forty-six one-thousand-dollar bonds outstanding. On June 1, 1938 there were four hundred and ninety-two one-thousand-dollar bonds oustanding. The last payment of interest was made on June 2, 1937, which paid the interest due November 27, 1936. The amount of cash on hand June 1, 1938 was $8,232.73.

District Number Eleven was a sewer district, which I understood included everything inside of the city limits.

District Number Twelve was issued February 5, 1927, was in the original amount of $225,298.51, with the maturity date February 5, 1939. The six-per-cent interest was due February 5 and August 5 and the installments on assessments are due December 13, annually. One June 1, 1930 there were outstanding one hundred and sixty bonds, in the amount of $160,000.00 and on June 1, 1938 there were one hundred and twelve one-thousand-dollar bonds. The last payment of interest was made June 4, 1937 and was in payment of interest due February 5, 1937. The cash on hand June 1, 1938 was $2,910.16.

District Number Thirteen was issued August 31, 1926, in the original amount of $10,523.54. The date of maturity was August 31, 1938, with the six-per-cent. interest due February 28 and August 31, and installments on the assessment due June 28. On June 1, 1930 there were seven bonds outstanding, in the amount of $1,000. each, and on June 1, 1938 there were five bonds, in the amount of $1,000. each, with cash on hand June 1, 1938 of $50.52. The last payment of interest was made August 10, 1936 and paid the interest which was due August 31, 1936.

L. I. D. Number Fourteen was issued October 1, 1926, in the original amount of $11,935.25. The date of maturity of this issue was October 1, 1938, with interest due April 1 and October 1 and installments on assessments due August 10. On June 1, 1930 there were nine one-thousand-dollar bonds outstanding and on the same date in 1938 there were seven bonds outstanding. The cash on hand on June 1, 1938 was $63.49. The last payment of interest was made August 24, 1937 and paid the interest which was due October 1, 1936.

District Number Fifteen was issued October 1, 1926, in the original amount of $4,860.78. These bonds matured October 1, 1938 and interest was due October 1 and April 1, with installments on the assessments due August 10, annually. On June 1, 1930 there were three one-thousand-dollar bonds outstanding and on June 1, 1938 there were two bonds outstanding. Cash on hand in the District fund as of June 1, 1938 was $307.56. The last payment of in-

terest was made March 3, 1938, and paid the interest which was due April 1, 1938.

L. I. D. Number Sixteen has been paid out. There were just two bonds. One bond was outstanding on June 1, 1930, which was paid in 1936.

L. I. D. Number Seventeen was issued July 31, 1926, in the original amount of $21,625.40. The date of maturity is July 31, 1938, with interest at six per cent., due January 31 and July 31, and the installments on the assessments due June 1, annually. On June 1, 1930 there were outstanding sixteen one-thousand-dollar bonds, and on June 1, 1938 there were three bonds outstanding, in the amount of $1,000.00 each. This is another district in the red in the amount of cash on hand to the extent of $619.97. In March of 1936 I called a bond District Number Seven, but when I wrote the letter transferring the funds to New York I made a typographical error and a bond in Number Seventeen was paid before the error was discovered. This came to light when the Clerk and I checked our book for outstanding bonds the following month. As a matter of fact, District Number Seven really owes District Number Seventeen some money, but I cannot take from this one District and put it in the other District. The last payment of interest was made November 30, 1935 and paid interest due January 31, 1936.

District Number Eighteen was issued October 1, 1926, in the original amount of $34,960.93. The date of maturity was October 1, 1938, with interest at six per cent. due April 1 and October 1, and installments on the assessments due July 20. On June 1, 1930 there were outstanding some twenty-six bonds, and on June 1, 1938 there were outstanding twenty-two bonds. Cash on hand in the District as of June 1, 1938 is $97.14. The last interest payment was made March 22, 1937, being the interest due April 1, 1936.

District Number Nineteen was issued January 5, 1927, in an amount of $464,104.47, maturing January 5, 1939, with interest on January 5 and July 5 and installments on assessments due November 9. On June 1, 1930 there were three hundred and thirty bonds outstanding, and on July 1, 1938 there were two hundred and fifty-three bonds outstanding. Cash on hand as of June 1, 1938 was $6,268.16. The last payment of interest was made June 4, 1937 and paid interest which was due July 5, 1936.

District Number Twenty was one of the unusual districts which paid out at or before maturity.

Q. How many bonds were outstanding in District Number Twenty on June 1, 1930?

A. There were ten bonds, in the amount of ten thousand dollars.

Q. The original issue in District Number Twenty was $12,425.72. Is that correct?

A. Yes, sir.

Q. Now in District Number Twenty-one, will you give us the information with respect to that District?

Mr. Johnston: If the Court please, I object to all of this, as to Districts 20, 21 and 22. Halsey, Stuart did not even sell those bonds.

Mr. Gamble: 21 and subsequent?

Mr. Johnston: Series 1, 2 and 3. They were never even purchased by Halsey, Stuart and sold to anybody.

Mr. Gamble: The purpose, your Honor, is simply to show, for the benefit of the jury, the quantity of the assessments. The assessments on these 21 and 22, even though Halsey, Stuart never sold them, were, nevertheless, liens on the lands which were assessed, or some of them.

The Court: There isn't very much more, is there?

Mr. Gamble: No; I am very near through with it, thank you.

A. Date of issue, May first, 1929, and original amount $9,820.70; date of maturity May 1, 1941; interest at six per cent., due May first and November first, and instalments on the assessments are due February 19, annually. The bonds in District Number Twenty-one were listed in amounts of five hundred dollars, and on June first, 1930 there were twenty bonds outstanding, in the original amount of $9,820.70. June first, 1938, there were fourteen bonds outstanding, in the amount of seven thousand dollars. Cash on hand June first, 1938, $244.97. The last payment of interest was made April 16, 1938 and was to redeem the coupon due May first, 1938.

District Number 22 was issued May 1, 1929, in the original amount of $17,343.86, with the date of maturity May 1, 1941 and interest due May 1 and November 1 and installments on assessments due February 19. On June 1, 1930 there were thirty-five five-hundred dollar bonds outstanding, in the original amount of $17,343.86. On June 1, 1938 there were twenty-four bonds outstanding, in the amount of $12,000.00. Cash on hand as of a later date was $570.69. The last installment of interest was paid April 16, 1938, to redeem the interest coupon due May 1, 1938.

District No. 23 was issued June 20, 1930, in an original amount of $8,903.13. The date of maturity is June 20, 1942, with interest due June 20 and December 20 and installments on assessments due April 30. On June 1, 1938 there were outstanding twelve bonds in the amount of $6,000.00. There were no bonds of District 23 on June 1, 1930 because the date of the issue was June 20, 1930. On June 1, 1938 the cash on hand was $190.04 and the last interest payment was made June 6, 1938, to redeem the coupon which will be due June 20, 1938.

We have in the City Treasurer's office the County Treasurer's monthly report, showing the amount of money collected for general taxes for city purposes, but we have no information of any kind respecting levies and assessments, except those pertaining particularly to the city. We have nothing to do with the collection of the city, county, state or school general taxes. They are collected at the Cowlitz County Treasurer's office, at Kelso, where are kept the records with respect to assessments and collection of general taxes, aside from the records made by the County Treasurer.

The office of the City Treasurer has nothing to do with the collection of any Diking District Assessments, nor do we have any records that disclose the extent or amount of Diking District assessments or the extent of liens which might be imposed upon property within the City of Longview by reason of these assessments. One examining the books in the office of the City Treasurer would gain therefrom no information whatever concerning the existence or amount of any possible assessments levied for Diking District purposes. The information with respect to that is in the office of the County Treasurer, at Kelso.

In discussing the Local Improvement Districts in Longview, a specific piece of real estate may be in more than one Improvement District, and there are a number of instances where there are assessments of two or three Local Improvement Districts against the same parcel of real estate.

Local Improvement District Number One includes generally the property lying adjacent to the hotel and westward from the hotel to Kessler Boulevard or Lake Sacajawea, which is an ornamental lake in a sort of crescent-shaped park, occupying quite a number of acres of ground.

Q. I want you to examine your records and give me the amount of the local improvement district assessments on certain specific lots or parcels of land located in various parts of the city of Longview which seem to be typi-

cal. Was an assessment levied in local improvement district Number One against block 214?

Mr. Johnston: I object, if the Court please, to this entire line of inquiry as to specific lots, picked out by counsel for the plaintiff, throughout the city of Longview in separate districts, and I submit that that cannot be competent, relevant or material for any purpose in this case.

The Court: The objection may be noted.

Mr. Johnston: It is not going to the entire assessment; it is picking out certain specific lots which counsel for the plaintiff select and ask for the specific assessment on those lots. I say that is not material to any issue in this case. May my objection show to the entire line?

The Court: Yes.

A. Yes, sir. The original assessment was $207.24. Five installments of that assessment have been paid, the last one on September 3, 1930. Block 214 was also included in District Number 11, and was originally assessed in that District for $43.97. Four installments have been paid, the last on May 5, 1930. Block 214 was subject to assessment in District Number 19 in the amount of $4.19, of which four installments were paid, the last on December 12, 1930. Block 214 is a three-cornered block of purely ornamental purpose out in the street. It appears immediately south of block 215 on the plat which has been identified as Plaintiff's Exhibit P-33.

Q. Can you tell us whether lot 11 in block 201 is included in L.I.D. No. One?

Mr. Johnston: My objection goes to this same inquiry, picking out certain lots.

The Court: Yes.

A. Yes, sir.

The original amount of that assessment in L.I.D. Number One was $380.83, of which five installments have been paid, the last one being on September 3, 1930. This same lot was assessed in District Number 19 for $17.70, which assessment has been paid. Notwithstanding this fact, it appears to have been on the list for the county tax sales in 1938.

Lots numbered 9, 10 and 11 in block 207 were all included in District Number One and on lot Number Nine the original assessment was $292.83, five installments having been paid, the last on September 3, 1930. On Lot Number Ten it was $258.97, the same number of payments and the same last date. On Lot Number Eleven the original assessment was the same amount as on lot Number Ten, and the same number of installments have been paid. The

assessment for District Number Eleven on lot Nine was $239.34 each, with the same number of installments paid. In District Number Nineteen all three lots were assessed at $17.69 each. Although these assessments have been paid on all three lots, the property is listed as being on the county tax sale on account of foreclosure of general taxes. Lots Nine and Ten in block 174 were included in L. I. D. Number One and each lot was assessed at $404.16. Five installments were paid, the last on September 3, 1930. Those lots were included in District Number Eleven, which assessed each lot at $185.51, on which four installments have been paid, the last on May 5, 1930. The assessment on District Nineteen on each lot is $17.70, of which four installments have been paid, the last on December 12, 1930. That property is included in the county tax sale list.

In L. I. D. Number One there were some irregular descriptions upon which assessments were levied that were not described by lot and block numbers. Generally speaking, the portion shown in red, extending from Ocean Beach Highway on the westerly side of Kessler Boulevard to the east end of Lake Sacajawea, could be described as an unplatted portion of Longview, bounded on the north by the southerly line of Missouri Boulevard and on the east and north by the westerly and southerly line of Kessler Boulevard. It seems to be a tract 120 feet in width, parallel with Kessler Boulevard, excepting the crossing rights-of-way for Louisiana Street and Hemlock Street, as shown on the plat of Olympic Addition to Longview Number Two, and Washington Way, as shown on the plat of St. Helens Addition. That is a description of the park property around Lake Sacajawea and the total amount of the assessment was $71,731.05.

Block 179 was also included in District Number Eleven and the amount of the assessment on the park which comprises one block in District Eleven was $3,877.23. Six installments have been paid, the last on August 9, 1932. That lot was also included in District Number Nineteen and the assessment of $412.07 was paid in full on January 12, 1928.

Block 179 was not included in any Local Improvement Districts in the City of Longview other than One, Eleven and Nineteen.

Block 137 was assessed in District Number One for $2,031.08. Five installments have been paid, the last on September 3, 1930. The assessment on that block in District Number Eleven was $1,031.80, of which four installments have been paid, the last on May 5, 1930. That was also in District Number Nineteen, under an assessment of

$307.77, of which four installments have been paid, the last on December 12, 1930, so it is in default as to the other installments.

Block 139 was included in District Number One and assessed at $2,972.75. It is a block located immediately south of the hotel, constituting a piece of ornamental property, triangular in shape. Five assessment installments have been paid, the last September 3, 1930. The assessment on this property in District Eleven was $1,581.96. Four installments have been paid, the last on May 5, 1930. The assessment under District Number Nineteen of this property was $471.54. Four installments have been paid, the last one December 12, 1930.

The block shown on the plat as 119 is an ornamental piece of property located immediately south of and across the street from the Longview Memorial Hospital. That is included in District Number One and is assessed at $10,299.95. There have been five installments paid, the last September 3, 1930. That property is a triangular park spot with sunken garden. The center of it is somewhat below the level of the paving on the three sides of the triangle. The assessment under District Eleven on block 119 was $651.18, of which four installments have been paid. The last on May 5, 1930. That block was also assessed under District Number Nineteen for $207.92 and the same number of installments have been paid, the last one on December 12, 1930.

Lots 11 and 12 in block 53 were assessed in District Number Two, the former for $573.17, of which five installments have been paid, the last on September 3, 1930; and the latter for $529.80, and the same payments have been made. Lot Number Nine in the same block was assessed in District Number Two at $1,225.83, all of which was paid in full on September 3, 1926. The assessments in District Number Eleven on lots Eleven and Twelve in this same block were $287.27 on each, with five installments having been paid, the last on May 5, 1931. These lots were also included in District Number Nineteen and were assessed at $55.30 each. Four installments have been paid on each lot, the last one on December 12, 1930.

Lots Fifteen and Sixteen in block 98 were in Districts Two, Eleven, Eighteen and Nineteen. In District Number Two lot Fifteen was assessed at $324.06 and lot Sixteen at $631.05. Six installments on each have been paid, the last one in March, 1932. Both lots were assessed the same under District Eleven, namely $296.18, with four installments having been paid, the last on May 5, 1930.

In District Number Eighteen the assessments on each lot were $611.51 and five installments have been paid, the last on August 26, 1931. Both lots were also covered under District Nineteen, assessed at $55.29 on each, of which four installments have been paid, the last on December 12, 1930. In respect of these properties, including the park property and a strip along Kessler Boulevard, our records reflect ownership as being in the Longview Company in each instance, except one section in block 41. I do not know whether that went back to the Longview Company or not but it was included in the tax sale.

Q. Will you refer to your L. I. D. Number Eleven assessment roll and give us the location and descriptions of some of the properties against which large assessments were levied? What is the first description you have after the platted portions that are described in L. I. D. Number Eleven?

Mr. Johnston: My objection goes to the sale of the individual lots.

The Court: Yes.

A. Description Number One is the large unplatted area lying north of the civic center, bounded on the north by Ocean Beach Highway, on the west by Olympic Way and enclosing some portion lying east of Vandercook Way, but not all of Vandercook Way, extending clear down to Maple Street. The original assessment on that was $84,415.44. Some of these blocks were subsequently segregated by action of the City Council. The total which has been segregated from Description Number One was $18,639.86. Of the portions which are segregated out, the assessments have been paid in full, leaving an assessment of $65,775.58 against unplatted and unsegregated portions of the original tract owned by the Longview Company. In District Number Nineteen assessments were levied against these various irregular tracts, most of them by different descriptions. There are twenty-nine irregular descriptions under District Nineteen. This District was created after the extension of the city limits of Longview and took in more unplatted areas around the sides.

Cross-Examination of Mrs. Faye Scott Witt by Mr. Johnston.

Mr. Johnston: Without waiving my objection to this line of inquiry, I will read the cross-examination so far as it is applicable. I think it is all general.

I am Treasurer of the City of Longview and become, by

virtue of that office, *ex officio* Treasurer of the Local Improvement Districts. I had nothing to do with the Consolidated Diking District, that matter being handled entirely by the County Treasurer of Cowlitz County.

The L. I. D. bonds in Districts 21, 22 and 23 were not guaranteed by the Long-Bell Lumber Company. They were bonds issued for improvements carried out in those three Districts and taken by the contractors who performed the work. So far as I know, the Long-Bell Lumber Company or the Longview Company had nothing to do with it.

We do not have a copy of the County Auditor's report that is made each year in my office. I do not know whether the City Clerk received one or not. I do not receive them as part of my official position as Treasurer. I am not familiar with these audits.

I took office as Treasurer in 1933 and was not connected in any way with the L. I. D. district work in 1931, when Mr. Windsor came to Longview. I cannot remember anyone connected with the Equitable Life Insurance Company or its counsel contacting me with reference to the L. I. D.'s before last year.

My records do not disclose which property is vacant and which is improved. It would be a mere matter of personal knowledge on my part of a particular location whether or not it was improved. All of these lots were originally owned by the Longview Company or the Longview Suburban Company. There had been some transfers, however, prior to the organization of the several Local Improvement Districts, so that at the time of the making up of the rolls there were then owners of certain parcels other than the Longview Company or the Longview Suburban Company. The rolls were made up to show the owner of the particular parcel of property at the time the assessment was spread. No record of transfers of title has come into my office since I have been there. Originally the court house used to get out one l... they do not do that any more. The only way I have of knowing is when the title company notifies me. I then make a change on my records when I receive that notice, which is not official. Until that time I continue to carry on my records the title of the property in the name of the person or company in whose name it stood at the time the assessment was spread and the books made up. So when I said that the Longview Company or the Longview Suburban Company or, in a few instances, the Long-Bell Lumber Company were the owners of a large number of these parcels, I was merely speaking of what my books show, which do not purport to be a record of the present

ownership of the property and which have not been kept up to date as to transfer of title.

I do not regard it as a part of my job as Treasurer to follow the transfer of title and to continually show on my books the present ownership.

When I was asked, with respect to a specific lot, who was the owner and I stated "the Longview Company," I was merely stating what the records show, which may or may not correctly represent the present ownership.

I am familiar with the practice of the Longview Company of selling property on real estate contracts, the title being retained by the company until a certain number of payments had been made. In such case the title would still show in the Longview Company until I was given notice of change by the issuance of the deed.

I was discussing District Number One, which is the one-hundred-and-twenty-foot strip of land along Lake Sacajawea, west of and fronting on Kessler Avenue. The records show that the Longview Company is the owner of the property and so far as I know it has never been transferred by deed or otherwise to the City of Longview or to any park district. I know the intention has been to do so, but so far as my records show it has not been done up to the present time. The Longview Company, so far as my records show, is the owner of that strip and could make such use of it as it desired, including a sale of that property as of any other tract of property in the same area. The Longview Company paid the installments of the assessments up to September, 1930. The next payment would have been due in September of 1931. When that payment came around the Long-Bell Lumber Company and its subsidiaries did not make payment. So far that one-hundred-and-twenty-foot strip as a matter of fact has been used as a park.

Referring to block 179, my records show that it is in the name of the Longview Company. That block was deeded by it to the City of Longview for park purposes, subject to the then-outstanding assessments. The last installment was paid in 1930. It does not show who paid it. I do not know because I was not Treasurer at that time. In any event, no payments have been made by the City of Longview since 1930. The payment was not made in 1931. I just know the fact that it was deeded to the City of Longview for park purposes, nothing shows on my record.

Referring to block 151, that is a triangular block on Washington Way, near the civic center. The name my records show as the owner is R. A. Long, and the assess-

ment was paid in full, so far as District Number One is concerned, when the first installment was due, in September, 1926.

Block 137 is a triangular block on Olympic Way adjoining the civic center. According to my records it is owned by the Longview Company, and so far as they show has never been deeded for park purposes to the City of Longview or to any other body. Five of these assessments were paid, presumably by the Longview Company, and the 1931 assessment went into default.

Referring to Block 139, it is a similar triangular block on Washington Way, opposite block 137. The records show the Longview Company as owner and they presumably paid the assessment up to September 3, 1930, so that the first installment which was not paid was in September, 1931.

All three of these blocks, 151, 137 and 139, subject to the restrictions applicable to lots and blocks in that area, were, so far as I know, subject to full use by the owners, but they were not regarded as anything but lots for park purposes.

Block 119 is sunken gardens on Fifteenth and Kessler Avenue, directly across from the Memorial Hospital. The interior of the lot is somewhat below the street level and is used as an ornamental garden, and I refer to it as the sunken garden. The records show the Longview Company to be the owner and the assessments were paid up to and including the 1930 installment. So far as I know, subject to the restrictions that are applicable to lots and blocks in that area, the Longview Company could have used that lot for any purpose it desired.

Block 113 is a triangular piece on Olympic Way and Hudson Street, in the vicinity of the civic center, east of the post-office. That block stands in the name of the Longview Company and I think the assessments in District Number One have been paid in full.

So far as I know, in 1930 the City of Longview had no bonds and has none today. I have been here since 1933 and have access to the records of the City of Longview, which disclose whether or not at any time in the history of the city there was a bonded or funded debt. I know that there was no bonded indebtedness in 1930, but I have not examined the records. I have not paid for any bonds since I have been Treasurer.

The total figure of outstanding L. I. D.'s in Districts One to Twenty as of the present time (June 1, 1938) is $1,471,000.

I was questioned concerning descriptions of property in Districts Eleven and Nineteen, referred to as unplatted or unsubdivided property, where it was described by metes and bounds or other appropriate legal description, and then was asked about portions of those descriptions that were subsequently set off with a separate part of the assessment against it. In instances where the name shows on the segregation, it will be presumed that, where the parcel is taken out of the general description, the Longview or Longview Suburban Company had sold it in order to allot to the purchaser the portion of the particular assessment so he would be required to pay it up in order to give clear title. In a great majority of instances the segregation went into the name of some person other than the Longview Company or the Longview Suburban Company. For instance, among numerous other persons, the Washington Gas & Electric Company or the four trunk line railroads. In a few instances there were subdivisions of portions of these unplatted areas, and in those instances there were separate assessments against the individual lots of the area as distinguished from the general assessment against the whole.

When these segregations were made, a plat or estimate was made up by the engineers of the Longview Company and submitted to the City Engineer of the City of Longview and, if approved by him, was passed on for recordation in my books and records. So far as I know, these segregations have been made with due regard to the amount of the general assessment represented by the particular portion of the land taken out.

As a matter of fact there are certain so-called zoning units which apply to a given description so that a part of the land in that description has a greater value than another part. These factors must be taken into account, and when a particular piece of ground is segregated out of a larger description, it must be determined in what particular zone that piece of ground falls. The only report I received from the County Treasurer is that of collections on the general tax rolls. These do not contain the Local Improvement Districts; they are made up direct. I presume the County Treasurer makes general reports which show collections from all sources, but all I get is one covering Longview.

Redirect Examination of Mrs. Witt by Mr. Howland.

The L. I. D.'s are not collected by the County Treasurer. They are made directly to me. I receive no report from the Diking District collections either.

CECILE STEELE, a witness on behalf of plaintiff, being first duly sworn, testified as follows (by deposition):

Direct Examination by Mr. Howland.

My name is Cecile Steele. I reside in Longview, where I am a Clerk in the County Treasurer's office and have been for twelve years. I have been in charge of the assessment rolls for diking and other improvement Districts of the County and am familiar with the methods by which the books of the County Treasurer, pertaining to both general and Improvement District taxes, are kept.

Q. Are you familiar with the Diking District in Cowlitz County, Washington, known as the Consolidated Diking District Number One?

Mr. Johnston: If the Court please, I object to all this inquiry regarding Cowlitz County Diking District No. 1 for the reasons I have elaborated in my presentation of objections heretofore to the Court, that the facts with respect to that District are not before the Court properly in this case and there is no question properly to which that evidence can go and it is not competent, relevant or material.

The Court: Those objections may be noted.

Mr. Johnston: I ask that it go to the entire line so that I will not have to repeat it.

A. Yes.

That is the Diking District which embraces within its limits the territory at the junction of the Columbia and Cowlitz Rivers, including the entire City of Longview, Washington. The Consolidated Diking District Number One was organized in 1925, when it first came into the County Treasurer's office. Bonds were issued by this diking district, and to provide for payment assessments were levied on all property inside of the diking district, which generally embraces within its limits the territory in the low ground at the junction of the Cowlitz and Columbia Rivers.

Q. Now I take it from your connection with and your duties in the Treasurer's office that you are familiar with the number of diking district bonds outstanding from time to time?

Mr. Johnston: The same objection.

A. Yes.

The date of issue of the Cowlitz County Consolidated Diking District Number One bonds was June 1, 1925.

6,520 bonds were issued, of a par value of $3,260,000.00, having been issued in denominations of $500. each. The bonds mature by their terms in 1943. The schedule was provided which showed how many could be called in each year. The interest rate provided was five and one-half percent.

The assessment schedule made by the County Treasurer's office to provide for the retirement of bonds was five per cent. for the first four years, six per cent. for the next four years and eight per cent. for the last seven years. The assessments were sufficient to pay the accrued interest and to retire the principal of bonds in accordance with the schedule just given. The assessments were payable under the same laws and dates as the taxes. In the first four years the assessment levies were sufficient to pay the interest on the bonds and to retire four per cent. of them annually. Prior to May 31, 1930, $706,000.00 worth of the bonds had been retired, leaving outstanding $2,554,000.

The owners of the principal portion of the real estate lying within the boundaries of the diking district, as I observed in the preparation of the assessment schedules, were the Longview Company, the Longview Suburban Company and the Long-Bell Company. Prior to the year 1930 the Long-Bell Lumber Company and its subsidiaries paid the assessments on each payment date, and up to May 1, 1930, there were no delinquencies in the diking assessment payments that had accrued up to that time, except on a few scattered pieces. The amount of the future installments of assessments was worked out so that, had they been paid at maturity, they would have retired the remainder of the $2,554,000.00 in bonds outstanding on May 1, 1930. I do not think the amount realized from the assessments in each year would have quite retired the maximum amount on the schedules, but there were always full payments that might make up the maximum amount where the taxpayer or property-owner desired to avail himself of the privilege of paying in advance.

I have with me the diking district assessment roll for the year 1929, payable in the year 1930, which gives the amount of future payments for any property against which the assessments were levied.

Mr. Johnston: I want to add to my objections now the same one made with respect to the other deposition, picking out certain parcels or separate lots and asking for the assessments, L. I. D. assessments or the D. D. assessments

on those lots as incompetent, irrelevant and immaterial, and is not proper testimony to be introduced in this case.

The Court: The same ruling.

Mr. Johnston: It does not go to any issue.

That figure with reference to lot 11 in block 201, unpaid, for the second half, was $7.44, and the unlevied balance was $97.47. Lot Nine in block 207 shows an unpaid second half of $7.21 and the unlevied balance was $94.40. These amounts refer to the second half payment for the year 1930, and the balance of the assessment as yet unlevied as of May 31, 1930. Lots 10 and 11 in block 207 show, respectively, $7.21 for the second half and $94.40 for the unlevied balance. Lot 9 in block 174 and lot 10 in that block show the second half was $6.46 and the unpaid balance was $84.63. Block 214 in Longview 8 shows the second half of $1.54 and unlevied balance of $20.18. Block 179 in Longview One had paid the second installment and the amount of unlevied balance was $2,041.99. The same information with reference to lot 9 in block 53, second half $35.22, unlevied balance $461.33. Lot 11 in block 53, second half $22.36, unlevied balance $222.94. Lot 12 in block 53, second half $21.16, unlevied balance $277.14. Block 98, lot 15 in Longview Eleven, second half $26.77, unlevied balance $352.62. Lot 16 in block 98, second half $37.48, unlevied balance $490.87.

The Longview Company, the Longview Suburban Company, the R. A. Long Properties and the Long-Bell Lumber Company paid general taxes upon the real estate assessed in the name of those companies in the City of Longview through the second installment of 1930—that is, they paid their installments that came due in November, 1931, the second half of their 1930 taxes. They did not pay the 1931 taxes due in 1932 on the greater portion of the unimproved tracts. So a large amount of unpaid general taxes accumulated on their properties in Longview.

Q. Now, how long did that situation continue to exist?

Mr. Johnston: I object on the same ground, going to the question of foreclosure for general taxes, 1937 and 1938.

The Court: The same ruling.

Mr. Johnston: On the ground it is not competent, relevant or material, or proper evidence to be introduced in this case.

A. Well, the taxes were unpaid in the fall of 1937. It was necessary for the county to foreclose on them for the 1931 and prior taxes, for which purpose the county insti-

tuted a foreclosure action in the Superior Court of Cowlitz County, Washington.

The Court gave the County judgment on the property and the County Treasurer was ordered to sell all of the property at foreclosure. He had very few bidders on the sale and the property was deeded to the County.

Plaintiff's Exhibit P-47 is a carbon copy of the final deed to the County and it now holds to the extent that resale has not been effected.

Q. Do you know about how many properties have been sold by Cowlitz County, Washington, since the issuance of the tax deed identified as Exhibit P-47?

Mr. Johnston: Subject to the same line of objections.

The Court: The same ruling.

Mr. Johnston: My objection goes to this whole line of inquiry.

A. Well, resales in the past year or so, I think, were about 185 lots and about 20 acres inside of the city limits of Longview. Those sales were handled by the County Treasurer's office and the properties were all sold at public auction, with a minimum price that was established by the County Commissioners.

Where the sale was for cash the lien that the County had on the property for general taxes was paid with the money and then out of the balance any county assessments were covered in turn, which includes special assessments for diking districts. If there was any surplus left over it was turned over to the City Treasurer to apply on L. I. D.'s against the property. The amount that my records show that have been transmitted to the City Treasurer of Longview in connection with these resales for the benefit of Local Improvement District bonds is $850.92. That may not have all been turned over as yet, but it is the amount credited on the various sales that have so far been consummated.

There were a large number of unplatted areas, against which assessments for Diking District bonds were imposed on lands not described by lots and blocks. Many of those areas were included within the boundaries of the City of Longview and were carried on the Diking District assessment rolls merely under a tract number. Those numbers were taken from the original roll, which was turned over to us and included the metes-and-bounds descriptions. The descriptions on the Diking District assessments roll does not correspond with the unplatted descriptions in the Local Improvement District assessment rolls, nor do they coincide with the descriptions for general taxes car-

ried on the general tax rolls. So, in order to determine the amount of Diking District assessments against a particular unplatted area and the amount of the Local Improvement District assessments, it is necessary merely to give the total amount of the assessments included in the various tract numbers.

I was furnished by Mr. D. H. Walsh, Chief Engineer of the Longview Company, with a computation for each of the tract numbers appearing on the Consolidated Diking assessment rolls, which computations show the area embraced in that tract number, and the original benefit valuation or total assessment per acre. That is Exhibit P-49.

Mr. Gamble: We offer in evidence Exhibit P-49 in connection with the examination of this witness.

Mr. Johnston: Objected to as incompetent, irrelevant and immaterial to any issue in this case; for all the reasons that have been previously stated with respect to the Cowlitz County Diking District, or any document referring thereto.

The Court: Subject to the same objection.

(PLAINTIFF'S EXHIBIT P-49 offered and admitted in evidence over objection of counsel for defendant.)

Cross-Examination of Mrs. Steele by Mr. Johnston.

I was familiar with the six diking districts which preceded the Cowlitz County Consolidated Diking District Number 1, which covered practically all of the same area now covered by that district. Those districts were financed by assessments against the property in the several districts and bonds were issued in all but one of them. When the Consolidated District was organized it did not assume that indebtedness. Assessments were still levied against the property, and property that was subject to those old diking district assessments continued to be subject to the assessments after the Consolidated Diking District was organized and property-owners continued to pay those assessments. Those bonds were all fifteen or ten-year bonds, assessed on a schedule, and when we had one hundred per cent of the benefit valuation levied that was the last assessment. I think the last assessment in 4 was levied in 1934, the last assessment in 8 in 1928, the last assessment in 6 in 1934, and in 7 in 1929. In some cases, I believe, in 10, we have not levied up to the full benefit valuation yet. We can still make more assessments. Dike 10 and Dike 6 are in default.

Some of the property inside the city limits of Longview is up on the hill, north and west of the town. That property is not within the Diking District, presumably because it did not receive any benefits from the dike, the theory of the assessment being that the property that benefited from the construction should pay the assessment. The Diking District embraces land beyond the city limits—roughly, 10,000 acres of land in the valley.

Diking District Number One had originally issued $3,260,000.00 of bonds, and prior to May 31 of this year there were still outstanding $2,009,000.00 of the principal of the bonds, which would m[illegible] a retirement of $1,251,000.00 in principal amount. [illegible] were periods, beginning about the 31st of May, 1931, when interest was not paid on its due date, but it was paid subsequently out of collections received by the County Treasurer on the diking assessments, so that to-day there is no default in interest.

When I referred to the owners of these properties I was referring to the person or corporation shown on my tax roll as the owner or persons or corporation against whom the assessment was being made. I do not attempt to show all of the transfers of ownership on our tax roll. We assess the property, not the owner.

The second installment of the 1929 assessment was due any time before November 30, 1930. When I answered Mr. Howland's question that the second installment of the 1929 assessment had not been paid as of May 31, 1930, that second installment was due on the first Monday of February, but they did not become delinquent so as to bear interest until the first day of December of that same year, so that none of the second installments of the 1929 assessments on the Consolidated Diking District Number One were delinquent on the 31st of May, 1930.

The records from which I take this information would show if they were paid during the year 1930, but if they were paid during the subsequent year it would not appear on this book. There would be nothing to indicate in this book whether subsequent installments of assessments upon particular lots about which I was questioned were paid. We have to take the rolls for succeeding years and check in order to ascertain that.

The second installment for 1929 was the last that the Longview Company, the Longview Suburban Company, and the Long-Bell Company paid on all or substantially all of their Consolidated Diking District Assessments on most of their unimproved properties that later went to the

County. Subsequent thereto they did pay the assessment on many parcels of property, some of which have been paid in full prior to the maturity of the bonds, which mature in 1943. Our book really does not show which is improved and which is not improved property, but they paid subsequent assessments on property that I know—both improved and improved. They had several classes of property. I would have no way of knowing of improvements unless I might be familiar with the particular piece of property.

The particular lots and blocks concerning which I was questioned were not picked by me but were selected by Mr. Howland, and I would have no way of knowing without checking my records for subsequent years whether or not subsequent installments of assessments were paid on any of those particular lots, blocks or parcels. I think $112,500.00 was paid during 1937 on account of the principal of Consolidated Diking District Number One bonds.

The foreclosure suit concerning which I testified had nothing to do with delinquent assessments on Consolidated Diking District bonds, but was based entirely upon general taxes levied and which became due for 1931 and prior assessments. The 1931 assessments were payable the first Monday in February, 1932.

I believe we foreclosed on delinquent Diking assessments in 1935. There was a deed issued to the County, in trust for the Diking District, but later there was a question whether that deed was good or not. Most of the property that is covered by that deed has gone to the County by the general foreclosure, so their title is good by virtue of that. Probably in most cases the unplatted parcels in the City of Longview that are included in some of the Longview Improvement Districts, which I included in certain numbered parcels that I gave, included in the same parcels other properties in those same numbered parcels in the Consolidated Diking District. The figure that I gave as representing the total assessment included the figure not only for the particular parcels that were included from the Diking District but also the entire parcel that was embraced in my Number Eighty-two or Eighty-three, as the case might be. These tracts overlap. Their descriptions are different. The figure which I gave of fifteen or twenty thousand as being the total assessment on the tract numbered Eighty-two or Eighty-three, excepting, of course, any segregations that might have been made in that original tract which were taken out and put into a separate heading, represented the total assess-

ment on all property included in the tract. When I used the word "balance" in referring to some of these figures I had in mind the balance of the total assessments after deducting therefrom any portions which may have been segregated for subdivision into separate parcels. Usually when Long-Bell sold a tract they segregated it and the balance was their portion.

The Long-Bell Company and its subsidiaries paid their general taxes, etc., on all or substantially all of their properties up to the installment due November 1, 1931. After that, just as in special assessments and Diking Districts, payments were then made upon selected properties for both general taxes and Diking District assessments.

The County Treasurer has charge of the redemption of bonds as well as payment of interest on the bonds of the Diking Districts. Redemptions are advertised in the county paper and the bonds are taken in numerical order, depending upon the amount of funds available in the Consolidated Diking District funds in the hands of the County Treasurer. The interest is sent to the fiscal agent of the County, in New York City. First the interest due on all of the outstanding bonds is paid, and then bonds are called with funds that are left. We do not pay the interest until we have enough to pay it in full, semi-annually. Until we have an amount sufficient to pay the semi-annual interest on the bonds we make no interest distribution.

I believe the upset price for property sold at public auction is set by a man through the assessor's office. It is supposed to be a reasonable valuation. He is not required to fix an amount sufficient to pay the general taxes and accumulated interest and Diking District assessment but uses his judgment. Recently we have only put up for sale those parcels that people have asked for, but there is nothing to prevent the County from offering them all at one time, if they want to.

Redirect Examination of Mrs. Steele by Mr. Howland.

In the old Diking Districts, that preceded the Consolidated Diking District Number One, on May 31, 1930, there was unlevied in Number Four about $71,000.00, only fifty per cent. having been levied. Diking District Six had a balance of $4,917.42. Districts Seven and Eight had been assessed in full. District Nine never had any bonds and District Ten had been assessed $26,279.98 at that date and was assessed $8,584.00 more. That has never been assessed in full according to benefit valuation. We can still

assess almost $30,000. on that Dike to cover the bonds outstanding, which are now 8,800. On July 26, 1930 there were in the first series 6,500 outstanding and on March 26, 1930 there were 6,300 in the second series—that is, 12,800 in old District Number Ten. Old District Number Four included property now embraced within the limits of the City of Longview, but the major portion of it would not have been within the city limits.

Diking District Number Six, covered the property that is mostly West Kelso, along the west bank of the Cowlitz River, a portion of which would be within the present limits of the City of Longview and a portion outside.

Diking District Number Ten was to the west and a very small portion of it was inside the city limits. The lien of this old assessment was a lien upon the property within the limits of the old Diking Districts and those old liens continued in existence, I think, on an equal basis with the Consolidated Diking District liens. The property within the city limits of Longview, not included within the limits of Diking District Number One, was that portion lying north of the ditch and the Columbia & Cowlitz Railroad, north of Ocean Beach Highway, where the hill starts up. It is a relatively small portion of the property included within the limits of the City of Longview.

There are no Dike assessments for the Consolidated Dike levied upon the park property which lies on either side of Lake Sacajawea as now located in the City of Longview.

Mr. Gamble: I have a certified copy of the proceedings I want to offer in evidence at this time.

The Court: Proceedings of what?

Mr. Gamble: Of the Plan of Reorganization, decree of reorganization of Long-Bell Lumber Company reorganization proceedings.

Mr. Johnston: Objected to for all of the reasons previously stated, as not competent, relevant or material to any issue in this case, having no bearing on any question which can be conceivably at issue under the pleadings in this case.

Mr. Gamble: It has a bearing, your Honor, a direct bearing.

Mr. Gamble: We offer in evidence, your Honor, Plaintiff's Exhibit B-53.

The Court: That is admitted, subject to the objection Mr. Johnston made before the recess.

Mr. Gamble: Yes.

(PLAINTIFF'S EXHIBIT P-53 offered and admitted in evidence over objection of counsel for defendant.)

JOHN W. DENNISON, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Herriott.

My name is John W. Dennison and I live in Evanston. I am an officer of the Continental-Illinois National Bank of Chicago, in the bank investment end of the banking business. In 1930 I was an officer in the Continental-Illinois Bank, a wholly owned subsidiary of the bank, functioning in the buying and selling of securities. My principal duties had to do with the buying and, to a lesser extent, with the selling of municipal securities, including tax anticipation warrants and other paper which was payable directly or indirectly from taxes. I was familiar in May, 1930, with an issue of bonds known as Louisiana Five Per Cent. Highway Bonds, due March 1, 1931. They were issued in the name of the State of Louisiana and were payable solely from gasoline taxes and highway revenues and were described as State of Louisiana Highway bonds. The market value of those Louisiana Five Per Cent. Highway Bonds during the month of May, 1930, it being a short maturity, was substantially par plus or minus a small differential from week to week.

I have had experience in the purchase and sale of the tax anticipation warrants issued by the City of Chicago, payable out of 1929 tax levies. I have participated in the negotiations and discussions prior to the sale of these particular warrants and the bank I represented was ultimately one of the group that purchased a considerable amount of these warrants and in turn resold them to other investors. In October, 1930 the market value of the 1929 Tax Anticipation Six Per Cent. Warrants of the City of Chicago was par to a slight premium of a quarter or possibly three-eights, depending, from week to week.

Cross-Examination of Mr. Dennison by Mr. Johnston.

I am a second Vice-President of the Continental Bank. These tax anticipation warrants were warrants issued against the 1929 general taxes for corporate purposes of the City of Chicago. Those taxes for 1929 had not been put in collection in 1930 and did not go into collection until sometime in April or May of 1931. No interest had

been paid upon those tax anticipation warrants since the date of their issuance, and was not payable until funds were available from the collection of taxes with which to pay both principal and interest. At different times these warrants fluctuated in value, considerably.

When I say "market value" I mean the same thing as the price at which they were selling currently in transactions with which I was familiar. That is exactly what I mean. I am not talking about inherent value; but by the use of the term "market value" I mean the price at which transaction were had at about those dates.

HORACE A. DRYER, called on behalf of plaintiff, being first duly sworn, testified as follows (by deposition):

Direct Examination by Mr. Howland.

I live in Portland, Oregon. I am a real estate operator in that city and have been since 1909. Since that time I have been engaged in the general real estate business, but in the last fifteen years I have handled a number of tracts of land and subdivided some property and bought and sold land and made considerable appraisals for banks and mortgage companies and loaning agencies and private people who were interested in employing me in that work. I have been a member of the Portland Realty Board almost since it was organized some twenty years ago and was President in 1936. I have been associated with the Northwest Real Estate Association and the Oregon Association and am now Vice-President of the Northwest Region of the National Association of Real Estate Boards. A great deal of my work in the last three years has been appraisal work in Northern Oregon and Southern or Southwestern Washington. I have been acquainted with the site of the present City of Longview for a number of years. I was acquainted with it prior to the time the city was laid out and established there, several years before 1923.

At the time of my first acquaintance with this territory a great deal of this land was classed as over-flow land from the Cowlitz and Columbia Rivers, and the cleared areas were operated as dairy farms. Some of the areas now embraced within the corporate limits of Longview were subject to overflow at times of high water, some of the land being covered with willows and some with cottonwood timber.

I cannot tell you just when I started to make my examination of this property. I came up here a couple of months ago and I was not a stranger in Longview in that I had been in and out of town and had watched this thing rather closely, particularly the dike situation. The last specific property I examined was business property over on Twelfth and Hudson Streets. Before that there was an apartment house known as the Blackstone Apartments and occasionally property where exchanges were anticipated. I was not up here often, but occasionally during the original period of constructing the dike and the City of Longview. Somewhere around in 1924 or 1925 I considered the opening of a real estate office in Longview.

In the last couple of months, in examining the area within the city limits, I attempted to accumulate and assimilate all information as to the amount of land in the city, the amount of platted and unplatted land, the amount of vacant land, the balance still due on the diking district and on the local improvement bonds, the city's debt and payroll, the number of people that live here and anything else I felt would be pertinent to me in coming to a final conclusion as to the valuation of the property. I have recently made an examination of the City of Longview and was familiar with the general situation there, both prior to and after 1930.

Q. I wish you would describe, and just give us a general picture of the condition of the city as you know it, and as you have seen it, first with reference to the topography of the land itself, that is, embraced within the city; and the approximate elevation and condition of the soil and that territory that is involved, starting at the North side of the city, and just describe the condition as it exists and as you have observed it in years past.

Mr. Johnston: Objected to as not competent, relevant or material to any issue in this case, the general description by this witness. I will, of course, later object to all of his testimony because of his lack of qualification. But, this objection goes to the subject matter of his examination and general description of the city of Longview as it exists today.

The Court: Objection overruled.

Mr. Johnston: My objection goes to this entire line.

A. Well, starting at what would be the northeast corner of the tract, to get a bearing, the corner of West Kelso, going down the Cowlitz River to the boundary line of the city, and along by the mills, out to the West Line.

The north limits of the city are about one hundred feet up on the hill, above the main platted portion of the city. The City of Kelso is located on the east side of the Cowlitz River, which runs north and south, approximately, and on the west side of the Cowlitz River is part of Kelso known as West Kelso. I suppose eight or ten blocks in the area where the bridge ends, as shown on Exhibit P-33, is taken up by West Kelso, along the west bank of the Cowlitz River. The City of Kelso extends right up to the Cowlitz River. Running along the west bank of the Cowlitz River, more or less parallel to it, is a dike which runs some fifteen, or in some spots twenty-five, feet above the surface of the ground immediately inside of it.

Coming into Longview south from West Kelso, on the east part of the city, it is practically all level land. First there had been a railroad built through the property, but the track has been removed and the railroad abandoned. I would call this river-bottom land or overflow land, there being little spots of willows and brush and little swampy places. This being bottom land, there is a great deal of fine soil where the water comes in and stands. This land has been built up year after year, and stumps have been found twelve or fifteen feet under the surface of the ground or deeper. At other places along the east side there are indications of wash, coarse sand and gravel, which runs no matter how far down you go and which is not suitable for agriculture at all. The Cowlitz River, running south, swings toward the east as it approaches the southerly line of the City of Longview, before joining the channel of the Columbia River. The territory down there near where the Long-Bell mills are located is also sandy. This is the land in the southeast corner of the city limits of Longview. Just west of that is one of the old sloughs that more or less parallels that tract of land and which is in its natural state. It has not been disturbed and was one of the old sloughs that ran all through this land before there was any City of Longview here.

There is the Long-Bell Lumber Company's operation along the north side of the Columbia, just west of the junction of the Cowlitz and Columbia, rather an extensive one, comprising, I guess, something around seven hundred or eight hundred acres. North of the mill sites the city is a low, swampy type of land, very sandy, with gravel spots all through it. That follows along the north bank of the Columbia River, north of the Weyerhaeuser Timber Company holdings. In the extreme westerly limits of the city there is a high knoll or hill which is locally referred to as

Mount Solo. That is mountain land, about six hundred and forty acres, with elevation of probably sixty or seventy per cent grade. The whole bottom land in the platted area of the City of Longview in its natural state had little sloughs and draws and little pot-holes and lakes, all of which have been filled up with sand or gravel. That was done to level up the area within the city residential and business areas.

Q. Now, in connection with your examination of the various portions of the City of Longview, did you make some examination with reference to the time when the city was laid out and the plats were filed for record in the establishment of the city? Did you familiarize yourself with those facts?

Mr. Johnston: I object to this entire line of inquiry for the reason it is not competent, relevant or material in this case and does not go to any alleged misrepresentation under which the plaintiff even seeks to rely in this case, much less has a right to rely upon.

The Court: What do you say about that?

Mr. Gamble: It is for the purpose of showing knowledge of the witness who is interrogated later as an expert as to valuation; it is for the purpose of qualification.

The Court: Then let it go in.

A. Yes, I did.

I also familiarized myself with the period in which real estate sales had actively taken place in Longview.

Q. What did you find with reference to the situation existing at the time you made the examination with respect to the pendency of certain tax foreclosure proceedings in the Superior Court at Kelso? I am not asking you to state what you found out, but whether you found out there were foreclosure proceedings then pending at the time you made the examination.

Mr. Johnston: Objected to for the reasons previously stated. The witness is purporting to be qualified as a witness and give values as to certain selected pieces of land in 1930. It is not competent, relevant or material to any proceedings in 1938.

The Court: Overruled. Proceed.

A. Yes, I did. That is, the examination within the last thirty days, or two months.

Q. Will you tell us in a general way some of the things that you found here in addition to the presence of the restrictions on lands which you took into account in arriving at your conclusions with reference to valuations, such as—just tell us some of the things you observed with respect to

the city, both in the years you have been acquainted with it, and recently.

Mr. Johnston: The same objection, if the Court please, incompetent, irrelevant and immaterial to any issue here.

The Court: Overruled. Proceed.

A. Well, as I mentioned before, I found about five thousand acres of land in the area of the city limits of Longview and approximately a thousand acres in that area was on this hill, and the balance of the area was in the valley running along the Cowlitz and Columbia rivers, with some seven miles of river front property here and a very large area of land set out as potential industrial property, and other areas set out in units of mill sites to differentiate them from commercial and business districts, and also restricted residential districts and apartment property, and a classification of all real estate within the boundary lines of the city, and of course I took into consideration I was appraising property in a town of approximately ten thousand people, and adjoining another town of some seven thousand population, and all the elements I might find. I was studying with the idea of arriving at a physical valuation of these properties.

None of the property embraced within the City of Longview had a frontage of something like seven miles on the Columbia River.

Q. What is the situation with respect to the distance between the residential areas down in what I would term the southern part of the limits of the city and the business center of the city? Can you give us some ideas with respect to that, down in Saint Helens Addition and the southerly portion—how far is that from the business center of the city or Commerce Street?

Mr. Johnston: The same objection, if the Court please, to this line of inquiry, which I ask go to the entire line.

The Court: The same ruling.

A. Well, it is a long ways.

It is practically four or five miles from the civic center or the First National Bank or library or post office. On P-33 the lower part of St. Helens Addition would be something over two and a fraction miles on a diagonal from the civic center. That is on a straight line rather than around the other way. From the business area in Longview it would be approximately the same distance, measured in a straight line. It is probably two miles from the center of the business district of Longview easterly to the Cowlitz River and from the business center of the city to the westerly city limits near Mount Solo probably four or five miles.

On plat Exhibit P-33 there is an area marked "Columbia River Gardens," in the northwest part of the city. This is separated from the residential section by intervening vacant lands. From the Columbia Valley Gardens down to the residential section which lies east of the park and the lake it is a couple of miles and between the Columbia Valley Gardens and the residential along what is marked on the plat "Ocean Beach Highway" it is vacant property on both sides, with the exception of now and then a little home of some kind.

There has been some improvement of the territory on either side of Ocean Beach Highway, lying between Thirtieth Avenue and the Highway, east of Lake Sacajawea. South of Ocean Beach Highway, between Thirtieth Avenue and the Lake, immediately north and west of the R. A. Long High School, there is just a large tract of land, practically level farm land. East of Thirtieth Avenue and north of Ocean Beach Highway is a little strip of level ground and then it becomes hilly, with heavy stumps, brush and timber. There is not a great deal of residential development. There are a few little homes started up on top.

Columbia Valley Gardens District is quite built up, with quite a little activity. It is widely separated from any of the other residential portions of the City of Longview by intervening farmland, which shows little development.

Immediately north of the civic center in Longview, within the triangle bounded by Maple Street, Columbia Way, Ocean Beach Highway and Vandercook Way is the library. There is no building starting from the library. Running west on Maple, northwest on Olympia Way and east on Ocean Beach Highway to the Catlin School, following south about a block and back in a southwesterly direction along Vandercook to the intersection of Maple Street shows practically no development other than a few little business properties along Vandercook Way on the north side of the street. There is probably something over a hundred acres in the area embraced within the tract lying north of the library and a triangle made by Olympia, Washington and Vandercook Ways, bounded on the north by the Ocean Beach Highway. The character of the soil in the majority is lower than that at the civic center. Part of the soil has been filled; part is the Columbia River silt soil, and the rest of it is sand and fills. There has been some road improvement started through those streets; they have been filled about four feet above ordinary tracts of land, particularly in the center. There have been some streets laid out through there but they

are just grading them. There is no paving or gravel or improvement of any kind in there. There is what was known as an old road that runs through the area and there is a little gravel on that, just a narrow strip about the width of a car.

The west side of the plat comprises what is shown here as blocks 79, 74, 73, 66, 72, 78, 77, 69, 76, 68, 63, 62, 61 and 60. There are little spots of cleared land out there but it is mostly willow and cottonwood and brush land. I observed no improvement whatever in that territory.

I found the higher class residential district of the City of Longview, where residences of the better type are now located, along the lake on Kessler and Nicholas Boulevard. There has been some development in the way of construction of residences in the triangular piece lying west of the civic center, between Olympia Way and Washington Way. There are no substantial improvements in the two blocks lying immediately west of the hotel. There are a good many vacant lots in that territory, but there has been some development along the lake and in the territory lying some six or seven blocks east of the lake. Coming down to the highway lying immediately south of Washington Way and on the east side of it, east and north of the park property, the territory lying between Washington Way in the north and east sides of the lake had been improved very little.

We found some small houses that were built in the territory south of the civic center located on blocks 121 and 122, shown on Plat P-33. These are just three or four-room houses, set up on wood blocks and ceilinged with ceiling lumber around the bottom up to about eighteen inches. They are not modern, there is a little secondary house in back, a woodshed. In fact, there are no basements or usable plumbing in the houses. With the exception of those houses, the school building and possibly one or two other improvements, the territory lying between Washington Way East and the north part of the lake is almost totally unimproved.

The character of the soil of the territory east and north of Kessler Boulevard and south of Washington Way is ordinary river-bottom land, which does not indicate fills, only in just certain spots. The fills adjacent to the lake indicate that the soil was pumped out of here in the development of this lake.

I examined the property in the southwesterly portion of the city, embraced in Highlands Addition, lying east of the territory known as Highlands Gardens, and which is em-

braced in Highlands Addition, lying east of the territory known as Highlands Gardens on Plat P-33 and intersected by the street described as Thirty-second Avenue. That is cow pasture, with grass growing over most of it and now and then a little shack—no development worthy of the name. There are a few scattered buildings and now and then a little shack or house. That ground is pretty low and I did not see any high lots included in the Highlands Addition. That is adjacent to the properties of the Weyerhaeuser Timber Company.

East of that territory is St. Helens Addition, which is mostly improved residential property. This is a cheaper residential area. Homes cost considerably less in this area. Some are what you would call the workman's type of home, different from those between the lake and civic center properties. They are much better than the homes in the Highlands Addition.

East of Oregon Way, in the vicinity of Arkansas Street and Adler Street on the plat, there are one or two corners with improvements; the balance of the property is very wet and swampy.

Going north to Baltimore, then east to California Way and following California Way back to the intersection of Columbia and California Way, which would be a triangular-shaped piece of property, about the only building within it is the stadium or ball park, the northeast corner of it has been sold, and a building over on Oregon Way, indicating a sewer pump house. The land is all scrubby willows and now and then large, heavy cottonwood trees. There are some small industries, like little paint manufacturing plants, and small industrial buildings in the upper part of that triangle, along what is designated as Baltimore Street and immediately to the north. There are quite a number of them. The property lying to the north of California Way, constituting blocks 2 and 3 on Exhibit P-33, is cleared.

A small part of 15 and 16 is cleared and is in meadow and now cow pasture. The remaining part of this land in the small triangle bounded by California Way, Baltimore Street and Oregon Way, designated as auto park and blocks 2, 3, 15, 16 and 19, is more or less brushy and wooded, with a slough running through it. The auto park has a lot of little cabins on it, a tourist camp development, with trees and is a rather neat little park.

The poorest land, I think, is in the territory between the intersection of California Way and Columbia Way, and then down that street to the Cowlitz River, at the

southeast corner of the city. That is very sandy, with coarse sand and cut up with some seepage water. I noticed that the pavement is cracked. The land has a tendency to slope from the north down gradually to where the Cowlitz flows into the Columbia. That particular area of the city is unimproved, and part of it not even cow pasture, since most of the grass is burned up because there is not much soil there. That condition exists a good deal the same way down to the west bank of the Cowlitz.

Q. What do you say as to whether the character of the city and the way in which it has been built, with these unimproved extensive areas lying between the different parts of the city has any effect upon the value of the unimproved lots or lands lying between the portions in which development has taken place?

Mr. Johnston: That is objected to as asking for the opinion of this witness, the objection being on the ground that, first, the evidence requested is not competent, relevant or material to any issue; second, the witness has not been qualified as a witness who was familiar with the property in 1930. He comes from another state and another city and falls, I think, clearly within the exact sort of witnesses described by our Supreme Court in *Elmhurst* v. *Dromier*, where they held it was incompetent for experts in Chicago to go out to Elmhurst to testify to conditions out there. It says it is error to have permitted them to testify. I submit the same is true of this witness. On both of those grounds I object to the testimony.

The Court: The objection may be noted.

A. Yes, I think so.

Q. What effect does that have? Just describe what, in your opinion, that effect is.

Mr. Johnston: The same objection.

A. Well, my reason for believing it affects value is that if this town had been platted for—if there had been enough land platted to have consumed the people that came here up to ten or fifteen thousand, you would not have platted anywhere near the area of land that had been platted here with possibility of a city of, say, fifty thousand, and, therefore, improvements were put in by the Longview Company in platted areas, like where they did their building and located improvements so that the fellow who lived in St. Helens and wanted to get to the post office would have to go three miles to get there.

Q. I do not believe you quite answered my question. What has been the effect of the development of the city

in this manner, with reference to there being any demand now for the intervening land, as you have observed it?

Mr. Johnston: I make my same objection to that, to all of this.

The Court: Yes.

Q. You have referred to the fact that the city has been built and developed with widely scattered areas and large tracts or vacant land between. Now what is the situation with respect to that vacant unimproved land in between, as you observed it, and as to the value of it?

Mr. Johnston: The same objection.

The Court: The same ruling.

A. I contend the value has been materially depreciated by the fact that the city of Longview has used and platted land way beyond the center of your civic activities, and located your resident population out on those scattered areas, and by doing that they have lost the opportunity of selling the residential property adjoining their business districts.

Mr. Johnston: I moved at the time of the taking of the deposition to strike that answer and I renew my motion on the ground it is purely theoretical, not based on actual knowledge and not proper or competent evidence.

The Court: The same ruling.

Q. Commerce street is shown as extending—improved by pavement, and it corresponds to Thirteenth Avenue? That is, it lies between Twelfth and Fourteenth Avenue, as shown by plat P-33?

A. Yes, that is right.

Commerce Street is the principal street upon which business buildings have been built at the present time in Longview. It lies between Twelfth and Fourteenth Avenues, as shown on plat P-33.

Q. What is the character of improvements which have been erected on Commerce Avenue, and where are they located?

Mr. Johnston: I renew my objection to all this line of questioning for the same reasons previously stated.

The Court: Yes.

A. Well, the principal buildings are located on blocks 78, 87, 80 and 86, and then there are several buildings running up to the north end of Commerce and down Vandercook Way, garage properties, and coming back to the lower or south end, running south from the north of Commerce, crossing Hemlock and Florida is the balance of your Commerce Street business properties.

The south end of the present business development is

about at Florida Street. As you leave Florida Street, down toward Douglas Street, there are a couple of concrete blocks that are improved and then you run into an area that is practically all vacant down to Douglas. From Commerce west to the civic center there are not many improvements. The First National Bank faces the civic center on the corner lot and other than that there is very little. The building of the Washington Gas & Electric Company is on Broadway and The First National Bank is on Hudson and Fourteenth. With the exception of the building which faces west on Fourteenth Avenue there is nothing very much between Fourteenth Avenue and the civic center. There are no business buildings of any kind and that is also true to the north of Broadway.

Q. So that the Monticello Hotel has been built over to the west of the civic center, and then there is the civic center itself, along Commerce, or substantially so?

A. Yes, running east down Broadway is, I mean when you leave Commerce, below the next block, east of there, there is some business property.

There is very little development down Broadway, between Broadway and the L., P. & N. depot. There is an apartment and a Moose Lodge Building, and four or five buildings, just as you leave Commerce Street going east. Below that there are no improvements. There is, I believe, a little apartment house down below, three or four blocks west and north of the depot. It is a stucco building. The majority of the buildings in Longview were built very soon after the beginning of the development, which first developed along in 1924 and 1925. There has been very little construction of buildings within the City of Longview subsequent to 1928. The buildings which are now here were constructed and were principally built between the years 1924 and 1928 or 1929.

No new industries have located at Longview to my knowledge, since sometime in 1926 or 1927. The principal industries of Longview affording employment, as I have observed them, are the Weyerhaeuser Timber Company, the Long-Bell Lumber Company, the M. & M. Plant, the Pulp and Paper, Pacific Straw Paper and the Longview Fibre Company. The larger ones were already located here considerably prior to 1930. I do not know about the smaller ones.

R. E. SIMOND, recalled as a witness on behalf of plaintiff, under the provisions of Rule 43-B, having been previously sworn, resumed the stand and testified further as follows:

Redirect Examination by Mr. Gamble.

I testified on the stand, the other day. I received, on or about March 21, 1930, a letter from B. J. L. (Mr. Larkin, a Vice-President of Halsey, Stuart & Company, in the New York office), relating to some Longview, Washington Local Improvement Bonds. Plaintiff's Exhibit B-54 is that letter. It is not indicated that I made any answer to that letter.

Mr. Gamble: In connection with the examination of this witness we wish to offer and read in evidence Plaintiff's Exhibit B-54.

The Court: Has Mr. Johnston seen it?

Mr. Johnston: Yes; I have seen it. I object to it as not competent, relevant or material to any issue in this case.

The Court: Objection overruled.

(PLAINTIFF'S EXHIBIT B-54 offered, admitted in evidence and read to the jury over the objection of counsel for defendant.)

There was no occasion to reply to that letter. During the year 1930 we bought $200,000 Longview L. I. D. Bonds from Barney Baruch, I think it was on October 7, 1930, at 89.

I do not know as a matter of fact that we did pay for them until November 21, 1930. This is not the same block of $200,000 in full which we confirmed to the Equitable Life Insurance Company of Iowa on October 16, 1930, because at the time we made the first delivery against the sale of $200,000 to the Equitable we had only some one hundred and seventy thousand dollars of these bonds on hand, and the balance were acquired elsewhere. I know of this $200,000 we had sold $17,000 or $18,000 before the order came in from the Equitable. They had been on our "bonds on hand" sheet for over a week.

Q. Now, assuming, Mr. Simond, that Halsey, Stuart & Co. did not pay Mr. Baruch for these bonds until November 21, 1930, what is the fact as to whether or not Halsey, Stuart & Co. had sold all of those bonds before it paid?

A. I assume that assumption is correct—I mean, that assumption would be correct.

Recross Examination of Mr. Simond by Mr. Johnston.

I was familiar with the market on these L. I. D.'s in March of 1930 and continuing through the year, and was familiar with the price at which these bonds were being bought by Halsey, Stuart & Company on the market.

Q. What was the price?

Mr. Gamble: That is objected to as not proper cross-examination, and on the ground that the price at which Halsey, Stuart & Co. were buying the bonds did not make the market.

Mr. Johnston: They were buying them in the open market.

The Court: I understood his question merely had to do with this one transaction with Mr. Baruch.

Mr. Johnston: I am seeking to explain this transaction.

The Court: I think your cross-examination should be confined to that.

Mr. Johnston: I have a right to go into the explanation of this letter, or the inter-office memorandum, to show the unusual character of this particular transaction.

The Court: I think you ought to restrict your cross-examination to this transaction with Mr. Baruch.

Mr. Johnston: All right, your Honor.

The Witness: It would seem from a letter from the New York office that Halsey, Stuart & Company had had some difficulties with Mr. Baruch in the past. He had purchased none of these L. I. D. Bonds from us, so he was not a customer of Halsey, Stuart & Company with respect to these bonds. He was a broker in New York. We were not interested in buying these bonds at all from Mr. Baruch, under the circumstances. We did not care whether we got them or not.

Q. For that reason you placed a very low bid on the bonds?

A. Yes, sir.

Mr. Gamble: Just a moment, that is objected to as purely argumentative, and not cross-examination.

The Court: Objection sustained.

The Witness: We had a specific reason for not caring to pay more for those bonds from Mr. Baruch. From other sources we were paying the normal market, where we sold the bond originally, or from retail accounts we were paying the normal market, around 97 or 98½, bought from brokers, if they bought the bonds from us and were not representing that account.

As a matter of fact, Mr. Baruch rejected this bid of 90 in March of 1930. The Baruch bonds were bought on the 7th of October, at 89, in a cash sale, not a trade of any kind. During the entire year of 1930 there was no other transaction like this Baruch transaction, either as to price or the circumstances surrounding it.

Redirect Examination of Mr. Simond by Mr. Gamble.

We were no more interested in buying Mr. Baruch's bonds in October, 1930 than we were in March; we paid him less. We said we would buy them in March at 90 and we bought them in October at 89. We were interested in buying them in March at 90.

Mr. Gamble: We offer in evidence PLAINTIFF'S EXHIBIT B-48.

Mr. Johnston: I object to Plaintiff's Exhibit B-48 unless some—that is an undated letter, purporting to be a copy of a letter addressed by R. A. Long to the bondholders of the Long-Bell Lumber Company. I object to that.

The Court: I thought we went over that at the time.

Mr. Johnston: I object to that as to materiality, competency and relevancy.

The Court: Objection overruled.

Mr. Gamble: We offer PLAINTIFF'S EXHIBIT B-50.

Mr. Johnston: Wait a minute. That is the one I objected to the examination of, that is December 31, 1936, the list of securities.

The Court: Yes.

Mr. Johnston: I object to that as not being competent, relevant or material to any issue.

The Court: You are making the same objection now, I take it?

Mr. Johnston: Yes.

The Court: The same ruling.

Mr. Johnston: I do not think it was offered before so I could not—

The Court: Oh, it was not?

Mr. Johnston: (Continuing.) —make the objection, but I make all the objections which I made to the examination with reference to that document.

The Court: All right, sir.

Mr. Johnston: Being a year not in question in this case.

Mr. Gamble: I offer in evidence PLAINTIFF'S EX-

HIBIT B-51, which is a supplement to the 1936 annual report.

Mr. Johnston: Objected to for all of the reasons given as to the preceding exhibit, B-50.

The Court: This is B-51.

Mr. Johnston: It is a supplement to the annual report of the Equitable for December 31, 1936.

The Court: All right. The objection is overruled.

Mr. Gamble: B-52 we offer in evidence, it being a supplement to the 72nd annual report, December 31, 1938.

Mr. Johnston: That is objected to.

The Court: The same ruling.

Mr. Johnston: For all of the same reasons.

The Court: The same ruling.

Mr. Howland: The plaintiff offers to introduce and read into evidence, in connection with the deposition of the witness, R. T. Demsey, EXHIBIT W-1, identified in said deposition.

Mr. Johnston: That is objected to, if the Court please, on the ground it is not competent, relevant or material to any issue in this case and does not go to any of the alleged misrepresentations and is not relevant to any issue presented by the pleadings.

The Court: It may be admitted.

Mr. Howland: I ask the same with respect to EXHIBIT W-2, being the reply to W-1.

Mr. Johnston: The same objection.

The Court: The same ruling.

Mr. Howland: The same offer is made with respect to EXHIBIT W-3.

Mr. Johnston: The same objection.

The Court: The same ruling.

Mr. Howland: The same offer with respect to W-4.

Mr. Johnston: The same objection.

The Court: The same ruling.

Mr. Howland: The same offer with respect to W-5.

Mr. Johnston: The same objection.

The Court: The same ruling.

Mr. Howland: The same offer with respect to W-6.

Mr. Johnston: The same objection.

The Court: The same ruling.

Mr. Howland: The same offer with respect to EXHIBIT W-7.

Mr. Johnston: The same objection.

The Court: The same ruling.

Mr. Howland: The same offer with respect to EXHIBIT W-8.

Mr. Johnston: The same objection.
The Court: The same ruling.
Mr. Howland: The same offer with respect to EXHIBIT W-9.
Mr. Johnston: The same objection.
The Court: The same ruling.
Mr. Howland: The same offer with respect to EXHIBIT W-10.
Mr. Johnston: The same objection.
The Court: The same ruling.
Mr. Howland: The same offer with respect to EXHIBIT W-11.
Mr. Johnston: The same objection.
The Court: The same ruling.
Mr. Howland: The same offer with respect to EXHIBIT W-12.
Mr. Johnston: The same objection.
Mr. Howland: The same offer with respect to EXHIBIT W-14. We did not offer 13.
Mr. Johnston: The same objection.
Mr. Howland: The same offer with respect to EXHIBIT W-15.
Mr. Johnston: The same objection.
Mr. Howland: We do not offer Exhibit W-16.
The Court: The exhibits may be admitted subject to Mr. Johnston's objections.

R. E. SIMOND, a witness on behalf of plaintiff, having been previously sworn, was recalled and testified as follows:

Direct Examination by Mr. Gamble.

We paid Mr. Baruch for this $200,000.00 of L. I. D. Bonds on October 20, 1930. I have the original New York ticket on this transaction with me indicating Henry Hintz & Co. will deliver the bonds on October 10th to us.

Cross-Examination of Mr. Simond by Mr. Johnston.

It was a cash transaction, with payment to be made on October 10th, and interest was stopped on that day. We paid no accumulated interest after that date. The check was not actually received by Mr. Baruch or his agent until the 20th, because he apparently could not deliver the bonds until that day. We were ready to make payment on the day fixed, and stopped the accumulation of interest on the bonds on the 10th, in accordance with our sales memorandum.

Q. The only reason they were not paid, the check was not paid, or delivered before that date was because you did not receive the bonds?

A. That is right.

Mr. Gamble: That is objected to, as calling for the opinion and conclusion of the witness. There might have been other reasons. That is not proper cross-examination, and not the best evidence.

Mr. Johnston: The evidence is right on the ticket itself. That is all.

The Court: I will sustain the objection. He did not answer it, did he?

Mr. Johnston: Yes.

The Witness: Yes, I did.

Mr. Johnston: All right.

MOTIONS BY DEFENDANT AFTER THE PLAINTIFF RESTED ITS CASE IN CHIEF.

Mr. Johnston: I would like to be heard just very briefly on some motions, your Honor.

The Court: Suppose we let the jury go and work a couple of hours tomorrow?

(Thereupon the following proceedings were had out of the presence and hearing of the jury:)

Mr. Johnston: If the Court please, merely for the purpose of preserving the record, I now desire to move, on behalf of the defendants, to strike that portion of the testimony of the various witnesses, including the entire lines of examination to which objections were made by the defendants during the course of the introduction of evidence, which objections were overruled by the Court.

I now desire to move, on behalf of the defendants, for a directed verdict, and state as grounds for said motion the following:

That the evidence does not disclose that of the alleged affirmative representations relied upon by the plaintiff in this case, (1) the representation contained in the circular with respect to the frontage of seven and one quarter miles on the Cowlitz River, the Columbia River was a material representation, there being no evidence to show that that in any way had any effect upon the value, market or otherwise, of the bonds in question; (2) that with respect to the statement contained in the circular, Plaintiff's Exhibit B-1, to the effect that because of its advantages and proximity to the timber stands, Longview was selected as the site of

the vast timber operations of the Long-Bell Lumber Company and the Weyerhaeuser Timber Company, was not a representation, as a matter of law, as to the physical boundaries of the City of Longview, but taken with its context, was merely a statement as to the general commercial advantages and possibilities to the city of Longview; that it was not a representation with respect to the physical boundaries of the city of Longview, and was not intended as such; nor does the additional evidence introduced by the plaintiff indicate anything to the contrary; that as to the representations contained in the letter of May 14th, 1930, from Mr. Wood of Halsey, Stuart & Company, to the plaintiff, the first representation, in view of all of the evidence that has been introduced, plus the letter itself, clearly shows that that was not and cannot be construed by the Court, as a matter of law, as a representation, as contended by the plaintiff, that "we have now given you or told you everything we know about Longview Improvement bonds." The language of the letter being clear, "we believe you now have before you all of the data with reference to this issue, but, if you desire anything further, call upon the writer, or call upon Mr. Kelley." That, as a matter of law, cannot be construed as a representation that they had furnished—or such statement was intended to be a representation that they had furnished — everything they knew regarding L. I. D. bonds, to the plaintiff.

That with respect to the second representation contained in that letter, to the effect that "You will observe that the City of Longview has no funded debt other than these bonds", it has been admitted that the witness to whom that letter was addressed, Hubbell, knew that these bonds were not a part of the funded obligations of the City of Longview. It has been at least conceded, or no evidence has been introduced to show that the representation was not absolutely true, that the City of Longview had no funded debt; that beyond that, that representation cannot be construed, we submit, as a matter of law, construed into a representation that no other municipal unit or body outside of the city of Longview had issued bonds, some part of which were liens or taxes upon the property within the city of Longview.

Those being all the representations relied upon as affirmative representations in the declaration, being the only representations proved as affirmative representations, we submit that the evidence is not sufficient to sustain the

plaintiff's declaration, which is that the defendants falsely, maliciously wrongfully and fraudulently made these representations to the plaintiff.

Now, with respect to the further allegations of the complaint, that there were certain fraudulent concealments, falsely and fraudulently made for the purpose of inducing the purchase of these bonds, we submit that there is not a basis for that, and ask that that be considered as one of the grounds of our motion, that there is not, as a matter of law in this case any duty created by the relationship of the parties, since they obviously stood, as the evidence shows, in no fiduciary relationship, but were dealing at arms length as buyer and seller, as to any duty upon the part of Halsey, Stuart & Company to disclose additional facts, the evidence showing that they freely disclosed whatever they had at the time, in the way of data and material, and subsequently, until before this suit was started, according to the testimony of the plaintiff's witness, furnished everything that they were asked for, and never hesitated to obtain any information which was requested. That, we submit, was their full legal duty; that therefore there is no basis for recovery in this case upon failure to disclose, or upon alleged fraudulent concealment, since no alleged fraudulent concealments are shown or proved.

We further submit that under the evidence in this case there is not presented to this jury a question as to the value of these securities, as of the true or intrinsic market value as of the dates of purchase, May 17th and October 17th and the intervening dates, and the value which those securities would have had upon those respective dates if they had been as alleged to have been represented, there being no evidence upon which the jury could find, if submitted to them, that difference, if any, between those two values, that being the rule of law, which must control in this case, it being the established law of Iowa as incidentally it is the established law of Illinois, and there being no evidence upon the issue of damage, to submit to the jury and the instruction of the Court should be for the defendants.

For all of those reasons, and the reasons which we have heretofore enumerated in the arguments to the Court, we pray the Court for the giving of an instruction directing the jury to find the issues in this case for the defendants.

As I understand the present Civil Practice Rules, it is not necessary that that motion be in writing, it is necessary that the grounds for the motion be stated. Does your Honor understand it that way?

The Court: That is the way I understand it.

Mr. Johnston: You do not understand that it requires it be reduced to writing?

The Court: Oh, no.

Mr. Johnston: But the reasons or the basis for the motion must be given to the Court. That is my understanding of it.

The Court: That is what I understand.

Mr. Johnston: If the Court feels that they are required to be in writing, then I ask your permission to reduce the motion to writing and file it.

The Court: There is not any reason why you could not reduce it to writing if you want to, and file it later on.

Mr. Johnston: It does not say anything like that in there.

Mr. Herriott: If there is any question to the extent that we can waive any objection to it, we certainly will not do anything other than to waive the presentation of the motion in writing, if that will help you, but I do not think that is required.

The Court: That will settle it, no matter which way it is done.

(Messrs. Herriott and Howland were heard in opposition to said motions.)

The Court: What do you fix as the actual worth of these securities?

Mr. Howland: There is some little confusion in the authorities with respect to that.

Mr. Johnston: None whatever in the Iowa cases.

Mr. Howland: It is either at the time the transaction was consummated or at the time of the discovery of the fraud, and there is some little differentiation in the authorities.

The Court: On what theory are you proceeding here?

Mr. Howland: We are proceeding upon the theory that the actual intrinsic value of the securities at the time the purchase was made, the difference between the value had the securities been as represented and the actual intrinsic value of those securities measures our recovery.

The Court: As of what time?

Mr. Howland: The actual intrinsic value at the time we bought them, the intrinsic, what they were actually worth.

The Court: How do you fix that?

Mr. Howland: That is to be determined by the jury, just as was said by the Circuit Court of Appeals in Hindman *vs.* the First National Bank of Louisville, which is in the

brief which I submitted to your Honor at the outset of this trial.

In that case it appeared that the bank had made certain representations with respect to the amount of money that a newly organized insurance company had on deposit with it. The representation was that the bank had a certain amount of net assets in the form of cash, that the bank held that cash for the insurance company's account. As a matter of fact, the cash had been derived from the discounted notes which the insurance company had endorsed and upon which it was liable to the bank.

Now, there was evidence introduced by the defendant that at that time the stock of this company was being sold and offered for sale at the same time and at the same price as made by the plaintiff.

The Circuit Court of Appeals—I think it is the Sixth Circuit said that the question is what was that stock actually and intrinsically worth? The fact that quotations and transactions may have occurred with reference to that stock, influenced by the representations made by the bank, or where it appears that that substantially controls the market that they are of no significance at all.

The question is what was the intrinsic worth of the securities at the time they were purchased by the plaintiff, and that is a question to be determined by the jury from all of the evidence before it, including the subsequent evidence, such as the failure of the company because of the conditions which then existed, such as the appointment of a receiver, and the dissipation of its assets.

The Court: Then you have switched from your theory of the Hotaling case?

Mr. Howland: No, I think the Hotaling case, if the Court please is an authority here. The only difference between the Hotaling case—

The Court: Not on your theory.

Mr. Howland: The only difference between the Hotaling case and our case is that in New York State, in the Hotaling case the Court said that the measure of recovery was the difference between the price paid and the actual intrinsic value at the time the security was purchased, and that subsequent events are to be taken into account in determining the actual intrinsic value of the security at the time it was purchased.

Now, that is my understanding of the rule laid down in the Hotaling case.

The Court: All right. Do you want to say any more?

Mr. Johnston: I would like to give the Court, if the Court desires it, these memoranda of authorities.

The law is not at all as counsel has represented it to the Court, but I do not want to take the Court's time to argue it just now.

The Court: I think I have made up my mind. I think this case ought to go to the jury. Your motion to exclude certain testimony, and your motion for a directed verdict, will be denied. I do not see anything in that Rule which says you must file a written motion.

Mr. Johnston: No, I don't either.

The Clerk: I will make a note of it on the Motion Slip.

BERNARD KELLEY, called as a witness on behalf of the defendant, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Johnston.

My name is Bernard Kelley. I live at Pittsburgh, Pennsylvania, where I am local sales representative for Halsey, Stuart & Company.

The year following my graduation from college I taught school for one year and since that time I have been with Halsey, Stuart & Company. First I went to the Chicago Office for a few months and then went back to Iowa, where I was born, and lived until I was through with college. I went to the Chicago Office of Halsey, Stuart & Company in the fall of 1926, and went to Iowa the latter part of 1926 or the early part of 1927.

I first located in Sioux City, covering Northwest Iowa selling securities for Halsey, Stuart & Company in that territory. I went to Des Moines in the late fall of 1928, and was located there as long as I stayed in the State of Iowa as the local sales representative in Des Moines and a small portion of the surrounding territory for Halsey, Stuart & Company.

I know Mr. Hubbell of the Equitable Life Insurance Company, first becoming acquainted with him shortly after going to Des Moines. I called on him in connection with the sale of securities, and after making the first contact with him I called on him very frequently, several times each week. When I first went to call on him my office was in the Insurance Exchange Building, but we subsequently moved to the Equitable Life Building early in 1930. We were originally on the second floor of that building and

then later went to the fifth or sixth, I don't recollect which it was. Mr. Hubbell's office, that is, the office of the Insurance Company, was in the same building.

In all cases, except for new issues, offerings of bonds for sale by Halsey, Stuart & Company, automatically came to me on what we call a bond on hand sheet, which was really an inventory list of the securities that we owned and were re-offering for sale.

Defendant's Exhibits 19 and 20, being copies of the bond on hand lists at the beginning of business on May 3, 1930, and May 10, 1930, are the forms in which those offerings came out to me and to all other salesmen. I had, prior to May, 1930, sold no Longview Improvement District Bonds.

Defendant's Exhibit 19, being the first of the identified bonds on hand sheets, shows on hand a certain number of Longview Improvement District Bonds. In addition, I received a daily bulletin that gave me changes in our inventory position during the week. After the receipt of Defendant's Exhibit 19, I called on Mr. Hubbell in connection with the sale of securities. I always had with me when I went to call on customers one of these bond on hand sheets, but I don't recall whether or not I took it out of my pocket.

I called on Mr. Hubbell sometime in the very early part of May, 1930, and at that time talked with him regarding the Longview Improvement District Bonds. In substance I told Mr. Hubbell that we had acquired in the market a block of approximately $85,000.00 Local Improvement District Bonds of the City of Longview, Washington, and that these bonds, in addition to being an obligation and a special assessment lien on the Local Improvement Districts of Longview, Washington, were unconditionally guaranteed as to the payment of principal and interest by the Long Bell Lumber Company. I gave him a circular describing the Longview Bonds, and, to the best of my recollection, a copy of that circular is Plaintiff's Exhibit B-1.

I notice that this circular is dated April 7, 1927, and at the time that I gave the circular to Mr. Hubbell I recall I told him the circular was not a recent one, but had been prepared at the time that part of the Longview, Washington, Local Improvement District Bonds were originally offered by Halsey, Stuart & Company. I recall nothing else that I told Mr. Hubbell at that time.

Mr. Hubbell told me he might be interested in the bonds but that he would want certain additional information. He made, within the period of the next few days, several requests for information. One thing he wanted to know was

how rapidly the Longview Improvement Districts were retiring bonds. The circular stated that the bonds were callable at par at any time, I believe—it might have been on any interest date, I don't remember that—but that they could be retired as the assessments on these properties were paid. Of course, they had been retiring some of their bonds and he wanted to know if I could supply him with the information as to how many bonds had been retired to that date as against the original amount still outstanding.

I told him that I did not have that information in my office in Des Moines but that I would attempt to get it for him. I then either wrote or telephoned a request to my Chicago Office to supply me with that information if they had it available. I received from Chicago a memorandum with respect to that information, which is Plaintiff's Exhibit B-23, addressed to me and starting out: "Frank just told me you want a schedule of the position of the Longview, Washington, bonds." This is the original memorandum. When I got that memorandum the first thing I did was to write in the amount of bonds that we had available in each of the districts. I just took our inventory list as of that date. There seems to be a total here of apparently about $75,000.00 or $80,000.00 in bonds. I took this original memorandum to Mr. Hubbell and left it with him. That is my handwriting on the right side showing that we had "none" of the bonds in several districts and there are others where there are five, thirteen, eight, etc.

I took this original memorandum and gave it to Mr. Hubbell, and I don't recall whether it was at this time but around that time Mr. Hubbell asked whether in the circular dated 1927 there was a balance sheet of the Long-Bell Lumber Company. Anyway, Mr. Hubbell asked if we had an annual report covering the Long-Bell Lumber Company's operations for the year ended 1929. I told him I did not have such an annual report as far as I knew in my own office but that I would attempt to get one for him. I transmitted that request, as well as transmitted his question as to whether I had any information covering the Local Improvement District Laws in the State of Washington. In response to the latter inquiry, I told him I did not have any in my office, in Des Moines but that I would get in touch with my Chicago Office to see if they had any information there that would be helpful to him covering the Local Improvement District Laws in Washington, which request I passed on.

Mr. Hubbell also asked whether I had any information covering the City of Longview in a general way, and I

told him that the only thing that I had in my local office in Des Moines covering the Longview Bonds or the City of Longview itself was the circular I had given him but that I would see whether I might be able to get anything from our Chicago Office and pass it along to him. I passed that request on to the Chicago Office.

I received from the Chicago Office certain information covering each of the requests that I made. I cannot recall from memory the exact date on which I did receive these various matters. By referring to a carbon copy of a letter from Mr. Frank Wood, who was the Sales Manager covering the territory that included the State of Iowa and who was my Sales Manager, I can refresh my recollection as to the date upon which I received this data and documents from the Chicago Office. It was May 14, 1930. On that date I received a copy of the Local Improvement District Laws of the State of Washington, and that is, I believe, what is marked Defendant's Exhibit 2.

I also received a balance sheet or annual report of the Long-Bell Lumber Company for the year ended December 31, 1929, dated January 1, 1930, which is Plaintiff's Exhibit B-34.

In addition to these two documents, I received a large envelope that contained information covering Longview, Washington. This package of documents was a large envelope, probably 10x14, very well filled with various data, making quite a bulky envelope. I knew what this bulky folder was but I did not examine it in detail to see what it contained.

After receiving these three items on the 14th of May, 1930, I delivered them to Mr. Hubbell personally, but I don't recall any particular conversation excepting that I was bringing him the information that he had requested from me. I told him that the package had been sent to me from the Chicago Office, that it was a file that had been taken from one of our files in Chicago, and that the Chicago Office had requested that it be returned. I told him that he might keep the balance sheet of the Long-Bell Lumber Company because we had other copies of that, but that there were certain things in the other file that we did not have copies of, that it was our complete file and so as a result we would want it returned to us. I also told him that he might keep the copy of the Washington Local Improvement District Laws.

I left those three items with him, the balance sheet, the digest of the Washington laws, and the large brown envelope.

I removed nothing from that envelope containing the considerable number of papers. It was turned over to Mr. Hubbell exactly as it came to me.

On the 14th of May, 1930, Mr. Hubbell asked if I would have the firm of Halsey, Stuart & Company, write a formal offering letter on the Longview, Washington, Bonds. I had been dealing with Mr. Hubbell approximately a year and a half by that time, and Mr. Hubbell had quite frequently made the request that we should make a formal offering of the bonds by letter. I don't have a distinct recollection of whether that was before or after Mr. Hubbell had indicated his approval of the issue. I know that Mr. Hubbell had expressed a considerable interest in the bonds at that time but he said he wanted to have this formal offering letter to pass on to his Committee, as they took final action on the bonds. That was true with respect to all substantial purchases, they finally went to the Finance Committee.

Mr. Hubbell did not request of me any further information at that time, or at any time prior to the 17th of May. I do not recall the exact date when Mr. Hubbell discussed with me the exchange of these L. I. D. Bonds for a holding of Louisiana Highway 5s which were in the portfolio of the Insurance Company. It was sometime during these various times when I was in Mr. Hubbell's Office to see him, bringing this various data and information to him, that this came up. I don't remember whether it was at late as May 14th, it might have been before that time.

I don't distinctly recall whether Mr. Hubbell or I first mentioned the State of Louisiana Highway Bonds. The question of their being used in this exchange was entirely a question of their being of early maturity. The bonds were, as I recollect it, maturing in March of the following year and we were in position to pay a price of slightly above par for the bonds of a very early maturity, and as I recall it there was no discussion whatever as to the merits of the State of Louisiana Highway Bonds themselves; I am quite confident there was not.

This practice of using bonds that were shortly to mature in exchange for bonds purchased was one that had been followed before in transactions with Mr. Hubbell, and was very frequently and quite generally a practice in large institutions which were investing funds.

My recollection is that our offering was of $85,000.00 worth of the bonds, with an indication that we believed we would be able to very shortly offer an additional $15,-

000.00 to make the block an even $100,000.00, which was the number or the amount of State of Louisiana Highway Bonds that we were discussing taking in exchange. This transaction, I believe, was laid before the Finance Committee of the Equitable Life Insurance Company.

As to why I did not present any L. I. D.'s to Mr. Hubbell prior to May 3rd, I did not represent Halsey, Stuart & Company in Des Moines at the time of any of the original offerings of the Longview, Washington, Local Improvement District Bonds. In fact, I believe that most of the offerings had been made prior to my connection with Halsey, Stuart & Company, and so naturally I had no opportunity to offer them to him on the original offerings.

During the year and a half prior to May, 1930, that I had been calling on Mr. Hubbell, we had at no time, to my recollection, had any substantial block of Longview Washington, Local Improvement District Bonds in our inventory. We were trading in the bonds in the market, acquiring them in the market from time to time, and my recollection is that our inventory position of them at most times was very small.

We were not accustomed to offering Mr. Hubbell small lots of bonds where they were not already holders of the same issue.

At that time I was familiar with the type of municipal bonds which the Equitable Life Insurance Company was purchasing, having sold them municipals and also public utility bonds. In general, the type of municipal bonds that were being purchased from me by the Equitable were higher yielding municipals, bonds yielding generally from 5% to 6%.

The consummation of the purchase was carried out by exchange through the Chicago Office. We had no operating department in Des Moines and I had nothing to do with it.

Subsequent to the 17th of May I had occasion to see Mr. Hubbell frequently as in the past.

From the time that we acquired and confirmed the $15,000.00 additional bonds, which was to my recollection after May 17th, as small blocks of the Longview Local Improvement District Bonds appeared on our inventory list, I would always offer those to Mr. Hubbell, or to the Equitable Life. I believe all those offerings were made at that time to Mr. Hubbell. He accepted some of them, purchasing additional bonds of the L. I. D. issue of various districts between that time and October 1, 1930.

I have no recollection of any conversation we had cov-

ering the bonds excepting as to the price and amount of the bonds offered during this period of time. I have no recollection that Mr. Hubbell requested any additional information, nor do I have any memorandum which indicates any such request.

Q. Now, Mr. Kelley, Mr. Hubbell stated that prior to the sale of or exchange of the $100,000 L. I. D.s for the State of Louisiana Highway Fives, which was consummated, I believe, on the 17th of May, 1930, he requested you to tell him with respect to District 19 as to whether or not that was co-extensive with the City of Longview: Was any such request made to you?

A. No, sir.

I knew nothing about District 19 as distinct from any of the other districts prior to May 17, 1930. As a matter of fact, I knew nothing about those districts or the Local Improvement District Bonds other than what was shown upon the circular and such information which I saw that I procured and turned over to Mr. Hubbell.

I had never been to Longview and knew nothing about the physical condition of that city except the information I got from the circular and the information that came in for Mr. Hubbell.

I received Defendant's Exhibit 21, which is the regular weekly bond on hand list dated October 11, 1930, about the date it bears.

I noticed that on this list there were $193,000.00 of the Longview, Washington, Local Improvement District Bonds. This list was sent to all the salesmen throughout the country every week. I got in touch with Mr. Hubbell and offered him the bonds. I told him that we had acquired in the market a block of $193,000.00 Longview, Washington, Local Improvement District Bonds, and I told him we were able to offer these bonds at par, less a quarter concession,—I believe there was a concession to insurance companies at that time—and wanted to know if he would be interested in buying them. He expressed an interest in the bonds, and I told him in offering the bonds that they were all of Local Improvement District 11, and he said, "Well, since these bonds are all of one district, why, there is certain information that I would like to have concerning them." So he asked if I could supply him with certain information covering District 11 of the Longview, Washington, Local Improvement District Bonds.

I don't recollect whether that was the date that I offered him the bonds or whether it might have taken place

within the next day or two. It would be difficult for me to remember that now.

Mr. Hubbell wanted the information as to whether the City of Longview owned its various utility services, such as water, gas and electric systems that supplied the City of Longview; whether the Long-Bell Lumber Company Mills were located within the corporate limits of the City of Longview, and also what district of the City No. 11 covered, whether it might be a small district or whether it was one that was approximately co-extensive with the corporate limits of the City of Longview itself. I had none of that information, and told him that I did not have any of that information available in my office in Des Moines but that I would get in touch with the Chicago Office and see if they had the information or if they could procure it for me.

I did get in touch with the Chicago Office and subsequently got the information from them. It was telephoned to me by someone in our sales group. My recollection is that it was Mr. Holden Smith.

That information telephoned to me was an answer to the questions that Mr. Hubbell had asked me in connection with the utility companies. The information, incidentally, was given to me over the telephone as a wire read to me that we had received, it was my understanding, from Longview, Washington, and was to the effect that the utility system plants located in Longview did not belong to the city, that District 11 was approximately co-terminus with the corporate limits of the City of Longview, and that the Long-Bell Lumber Company Mills and the Weyerhauser Mills were neither located within the corporate limits of the city.

After receiving this information I talked with Mr. Hubbell about it within a short period of time, as soon as I was able to reach him. I don't recall whether I went to his office or whether I called him on the telephone, but I do recall talking to him and passing the information on to him that I had received, to the effect that the city did not own the utility services or the utility systems located in Longview, that the Long-Bell Lumber Company Mills and the Weyerhauser Mills were not located within the corporate limits of the city, and that District 11 was approximately co-terminus with the corporate limits of the City of Longview.

Q. I will ask you to look at the original telegram which has been marked by the reporter as Defendant's Exhibit 23 for identification, and tell us if you can recall whether

that is the telegram which was read to you, as you have testified, over the telephone?

Mr. Gamble: That is objected to as calling for incompetent evidence. How can this witness know whether that is the telegram read to him. He says he got his information by telephone.

Mr. Johnston: That is right; he can tell whether that is the substance of the telegram.

The Court: I will sustain the objection.

Mr. Gamble: And calling for a self-serving declaration.

I cannot recall the date from memory on which I received this information and transmitted it to Mr. Hubbell, but having just now seen the telegram and having had my recollection refreshed, I received this information on the morning of October 17, 1930, and transmitted it to Mr. Hubbell on the same morning. No other information, documentary or otherwise, was requested by Mr. Hubbell during the period from the date when I first presented to him the bonds shown on the October 11th sales list and the 17th of October, 1930. He asked for no information, either with respect to the Long-Bell Company, the Longview Company, or the City of Longview, other than what I have already stated.

Prior to the time that I first presented these L.I.D. Bonds of District 11 to Mr. Hubbell, I talked with him regarding the Equitable's holding of $200,000.00, par value, City of Chicago, 1929 Tax Anticipation Warrants. That conversation, as near as I can recall, took place previous to the middle of October, either the latter part of September or the early part of October. We had not sold these warrants to the Equitable, but Mr. Hubbell spoke of them one day and expressed a desire, if he could do so at a satisfactory price, to dispose of them at some time because of certain information that he had received regarding the tax situation in the City of Chicago. I had told him then that I would keep it in mind, if there was a time that we could get a satisfactory price for him.

In connection with this offer of L.I.D. Bonds, I discussed again with Mr. Hubbell the question of these Tax Anticipation Warrants of the City of Chicago. I did not discuss the situation except from a market standpoint, but I did refer to his expression some time previously that he was not satisfied with his holding of those Warrants and that we might be able to work out an exchange of this block of Longview, Washington, Local Improvement District Bonds for his Chicago 1929 Tax Anticipation War-

rants at some price that might be satisfactory to him. He seemed very much interested in my suggestion.

In both of these two principal offerings which I have discussed, the Louisiana 5s and the Chicago Tax Anticipation Warrants, the price at which they were to be taken were fixed by my Chicago office. I did not know what the exact market position on those issues was at any time excepting as my Chicago Office would give me that information. I was in telephone communication almost every day with the Chicago Office. Subsequently, the transaction exchanging the $200,000.00 Tax Anticipation Warrants for a total of $200,000.00 par value of the L.I.D. Bonds of District 11 was consummated.

I had no authority to confirm bonds in Des Moines and we had no operating department there, so the actual transfer of the bonds and getting the bonds from the Equitable Life Insurance Company was all handled through Chicago Office.

I have no distinct recollection as to whether the Executive Committee of the Equitable Life Insurance Company met on the 17th of October.

Subsequent to the 17th of October, during the next three or four months, I believe we had several small transactions with the Equitable Life Insurance Company in the Longview Local Improvement District Bonds. These transactions were principally to replace bonds that were being called in the districts that the Equitable had bought prior to that time. They were not in very great volume, but there would be three or four bonds that the Equitable owned that might be called in for payment at par and I would offer, if we had bonds available at that time, bonds of later numbers to replace them. It was merely a replacement of bonds that the Equitable then held with other bonds of the same character. It is my recollection that there was one exchange of L.I.D. Bonds which had not been called for others which also had not been called.

Plaintiff's Exhibit B-47 seems to have been the last transaction in these L.I.D.'s, and refers to such an exchange.

I recall a conversation in respect to that transaction. Mr. Hubbell had expressed a preference for the bonds that were in not later than the 80% classification in the various districts. To explain an 80% classification I could do it best by illustration: If there were 100 bonds outstanding in any one of the districts, the first 10 bonds would be the 10% classification; that is, numbers 1 to 10. Bonds from 51 to 60, for example, would be the 60%

classification, and the bonds from 71 to 80 would be the 80% classification, etc., which was the order in which the bonds would be retired. The earlier numbers were retired first as the assessments were paid in and funds became available for the retirement of the bonds by call at 100. Mr. Hubbell had expressed preference to have some bonds of the earlier numbers which would place them in an earlier order as to being called for payment. It is my recollection that all of the bonds in each district had the same maturity date.

We made the exchange referred to and gave Mr. Hubbell bonds in the 80% classification, taking an exchange of bonds in the 100% classification, both being Longview, Washington, Local Improvement District Bonds.

Plaintiff's Exhibit B-44 was addressed to me on September 25, 1930, from our Chicago Office. The statement, "We will put in on a will advise ticket with others which we are holding" means in our business, or with our firm at least, that the date of delivery will later be given to us by the purchaser of the securities. In other words, we may effect the sale as of today and the securities may be ready for today, but as we confirm the sale of bonds to this customer we may not get the final delivery instructions. In fact, it is my recollection that many times we did have such transactions with the Equitable Life Insurance Company of Iowa where we would confirm a sale of the bonds to them and then at some later date, when they were ready to take delivery of the bonds, they would advise us to that effect and we would go ahead and follow out their delivery instructions. That had nothing to do whatever with the question of whether or not we had the bonds on hand. It was to suit the convenience of the customer, in this case the Equitable, as to when they desired to take the bonds and pay for them. During all this period of time while these transactions were going on I was calling on Mr. Hubbell and selling to him other securities on behalf of Halsey, Stuart & Company, and this continued through 1931.

It is my recollection that I made sales to the Equitable Life Insurance Company up to and including the spring of 1934.

I made up defendant's Exhibit 25, being a list of securities, divided into Public Utility Bonds and various State, City, County and District Bonds, sold to the Equitable Life Insurance Company of Iowa by Halsey, Stuart & Company, from my records and the records of Halsey, Stuart & Company. It is my recollection that all of these

sales were made while I was a salesman for Halsey, Stuart & Company in Iowa. I think there may be two or three blocks of the Utility Bonds that were sold to the Equitable Life Insurance Comapny of Iowa by Halsey, Stuart & Company prior to the time that I went to Des Moines in the fall of 1928, before I was representing Halsey, Stuart & Company in that territory.

I do not recollect exactly what issue it was, but it was two or three blocks; the rest were all sold during the time I was calling myself on the Equitable Life Insurance Company of Iowa. This represents as accurately as I can obtain from my records the issues, amounts sold, rate of interest, and date of maturity of the issue.

Defendant's Exhibit 26, which starts with March 4, 1929 and goes to April 4, 1934, is a list of the securities sold to Equitable by Halsey, Stuart during those years. I have checked this list before and I think that it includes all the sales that were made during that time, my only reservation being that there might be some sale that for some reason we did not locate in my records, but at least all of the sales that are shown on Defendant's Exhibit 26 were made by me to the Equitable during the years 1931, 1932, 1933 and 1934.

This Exhibit, Defendant's 26, shows the date of confirmation of the Home Office, which would be preceded by some days in some cases by the date of sale. That would be according to what we term a sale. The figures under par amount represent the number of par value of bonds that were sold. The issue is the name or the description of the issue of bonds, the rate is the interest rate which they bore and the maturity is the maturity date of the bond.

During 1931, I sold in par value to Mr. Hubbell's company $1,561,000.00 of various issues. During 1931, after the exchanges were made, the subject of the L. I. D. Bonds was first brought up in May, but I do not recall definitely that it was Mr. Hubbell. It was either Mr. Hubbell or Mr. Windsor. Mr. Windsor, I believe, was an assistant to Mr. Hubbell. He was in the Investment Department of the Equitable at that time. It is my recollection that he went into that Department either in December of 1930 or January of 1931, although I might not be exactly correct on that. As for the other members in the Investment Department, I don't know that you could say that the other members of the Committee were in the Investment Department. They had to do with the investments of the Equitable Life Insurance Company but

I don't know that they were considered by the Equitable as members of the Investment Department.

It is my recollection that Mr. Nollen was president of the Company at that time, and I had some conferences with him. If Mr. Hubbell was away from the city at any time, I usually talked to either Mr. Nollen or Mr. Griff Johnson.

In the sale of Municipal Bonds of all classes at that time, and at all previous times that I had been engaged in the sale of Municipal Bonds, it was not the practice in selling bonds to go into the question of overlapping issues of municipalities. To describe the term "overlapping issues," if I am offering the bonds of a city, the circular that I am presenting would probably give the statement as to the debt of that city, but the overlapping debt would be the proportionate share of either the county's debt or the school district's debt, or the park district's debt, or the debts of various special districts such as the local improvement district, that might cover the city whose bonds I might be offering.

My recollection is that the question of overlapping debt had never been discussed by myself with the Equitable Life Insurance Company, or any other customer of mine, in connection with the sale of this issue of bonds or any other issue of bonds.

The Exhibit which has been identified as Defendant's Exhibit 26, prepared by me, shows a total of State, City, County and District bonds of various issues sold to Equitable Life Insurance Company of some $2,900,000.00. In connection with the purchase of those various issues, the Equitable Life Insurance Company had never sought from me any information with respect to overlapping debt of other taxing bodies within which the municipality lay, and was a part of that particular City, County or District.

Going back to the conversation with Mr. Hubbell or Mr. Windsor in the latter part of May, 1931, either Mr. Hubbell or Mr. Windsor stated that Mr. Windsor was contemplating a trip to the Pacific Coast to look over some of the Equitable Life Insurance Company's investments in that district, and that along with a number of other situations he would be looking over, he expected to be able to spend a little time at Longview, Washington. Either at their request or at my suggestion, I have no definite recollection of which it may have been, I told them I would be glad to get in touch, or have our Chicago Office get in touch, with someone at Longview so that Mr. Wind-

sor would be properly identified when he reached Longview and would be extended whatever courtesies they might be able to offer him at that time. That I did, and Mr. Windsor returned from that trip sometime in the summer of 1931.

Having looked at Defendant's Exhibit 4 for identification to refresh my recollection, I should say that the date of June 3, 1931, shows that the trip was made approximately in that month. I talked with Mr. Hubbell subsequent to June 3, 1931. I don't remember the exact date, but sometime during that summer I talked to both Mr. Hubbell and Mr. Windsor in regard to the latter's trip to Longview particularly. I cannot recall exactly what our conversation was word for word, but Mr. Hubbell read me parts of the record that he had received from Mr. Windsor, apparently made by him as a result of a visit to Longview, Washington, and then after he had read me parts of that report he asked me if I could get him certain information covering the property owners of the lands in the City of Longview, or he asked me if I had that information. When I told him I did not, he wanted me to get it for him. I have no recollection of anything else specific that he said at that time.

Mr. Hubbell did not complain to me or say to me that the facts with respect to the L. I. D. issue had been misrepresented by me or by Halsey, Stuart & Company. He made no such complaint or statement at that time, not during the years subsequent, 1931, 1932, 1933, 1934, or at any other time. I have no recollection of him saying anything to me regarding the location of the plants of the Long-Bell Lumber Company or the Weyerhauser Timber Company Mills. I have no recollection of him saying anything at all. I believe there was some reference to that in the report, but I do not believe Mr. Hubbell said anything about it at all.

At the time that I offered these bonds originally to Mr. Hubbell I had no knowledge as to where the Mills, either Long-Bell or Weyerhauser, or any other Mills, were located; not whether they were technically inside or outside the city limits. The first information that I obtained or had with reference to the subject of the location, at least of the Long-Bell and Weyerhauser Mills, was secured in October of 1930, being the time I previously testified to.

Mr. Hubbell did not, on the occasion in 1931, after reading me some excerpts from Mr. Windsor's report, complain to or state to me that I had not given him all

the facts regarding the financial condition of the Long-Bell Lumber Company. That subject was never mentioned to me by Mr. Hubbell at any time during the year 1931 or subsequent years up to the present date. Mr. Hubbell at no time stated to me that he felt Halsey, Stuart & Company had defrauded the Equitable Life Insurance Company or had misrepresented to the Equitable any fact or circumstance in connection with the sale of these L. I. D. bonds.

Mr. Hubbell asked me for certain information as I have already indicated, and I transmitted that request to my Home Office, receiving sometime during the year 1931 letters or memoranda in response to this request. These were in the form of letters from Alex Hay and others. I have no recellection in what form each of them came to me, but I do have a recollection that there were original memoranda from my own office in Chicago that came to me. Those I turned over to Mr. Hubbell as they came to me, and there were also copies of letters that we had received from Longview, Washington, I presume from Alex Hay.

I do not have a definite recollection as to who had written the letter in Lon, view, and the copies of these letters I turned over to Mr. Hubbell as I received them. I turned over to Mr. Hubbell all such information that I received from time to time from Halsey, Stuart & Company pursuant to these various requests. I never withheld from Mr. Hubbell any information that I received from the Chicago Office in the character of letters or memoranda or whatever form it was received. I always turned over all of the information to Mr. Hubbell that he requested as I received it. I had a great many talks with Mr. Windsor late in 1931 and 1932 with reference to the L. I. D. Bonds.

Defendant's Exhibit 16, dated November 11, 1931, is a second report from Mr. Windsor to Mr. Hubbell. I should say my discussion with Mr. Windsor came at a date somewhat later than this memoranda. Whether it was a week after that or a month or two months, I don't remember accurately, but sometime in the latter part of 1931 or early in 1932, Mr. Windsor came to my office one day in the Equitable Building and told me that I would probably be interested in knowing what the boys upstairs had been doing recently. I asked him "Well, what is it?" and he said, "They have been going over the correspondence and various data that you have supplied us with covering the sales of the Longview, Washington Local Improvement District Bonds to us, to see if they cannot find

some misrepresentation that you might have made in order that we might be able to make you people repurchase the bonds." He went ahead to say I need have no concern about it, however, because they found no such misrepresentations. That is the substance of the conversation.

After Mr. Windsor's return from his trip in June to Longview he never stated to me that the facts with reference to the Longview Local Improvement District Bonds had been misrepresented by me or by Halsey, Stuart & Company. He at no time during my contacts with him or the Equitable made any such representation or statement to me.

I have no recollection of whether either Mr. Windsor or Mr. Hubbell at any time during the year 1931, or any subsequent year thereto, ever stated to me that I or Halsey, Stuart & Company had failed to disclose any facts about this issue which they should have known.

Mr. Windsor never referred to the balance sheet of Long-Bell Lumber Company which I have testified I furnished to him, or stated that it did not give him adequate or full information regarding the Long-Bell Lumber Company.

The matter of the Cowlitz County Diking District No. 1 Bonds was never mentioned to me by Mr. Hubbell in conversation with him. In the winter of 1933-34, I don't know what time it might have been, Mr. Windsor did ask me. At that time I was living in Chicago, but was going to Des Moines frequently to call on various accounts. Mr. Windsor asked me if I knew whether the Cowlitz County Diking District covered all of the City of Longview, and I said: "I have no ideas as to whether it does or not. Do you want me to get that information?" and he stated "No, don't bother about it, I am getting the information in another place," but that is the only time that the Cowlitz County Diking District or its bonds were ever mentioned to me by either Mr. Hubbell or Mr. Windsor.

At the time I sold the L. I. D. Bonds to the Equitable Life Insurance Company I knew very little about the Cowlitz County Diking District Bonds. I knew there was such an issue but I had never sold any of them. The bonds had been offered previous to the time I had gone with Halsey, Stuart & Company, and we had never had a supply of the bonds during later years. We might occasionally have had a bond or two in our inventory, but it would have been a very small amount.

I never made, to the best of my knowledge, any offering of the Cowlitz County Diking District Bonds. I knew

nothing about the details of that district and the territory it covered, or whether the City of Longview was, in whole or in part, within the district.

No questions were ever asked me regarding that Diking District by Mr. Hubbell, Mr. Windsor or anyone else when these bonds were being purchased, or at any time thereafter, with the one exception in 1933 or 1934.

The handwriting on the bottom of Defendant's Exhibit 13, a memorandum dated May 27, 1931, was not on there at the time I turned it over to Mr. Hubbell. I never saw it before I sat in the witness chair here. I saw the original memorandum, not the handwriting at the bottom. The initials "J. H. W." appear on that, and I presume they are Mr. James Windsor's.

Defendant's Exhibit 6, being the balance sheet for the year ending December 31, 1930, including the letter from Ernst & Ernst, I gave to Mr. Hubbell sometime in the spring of 1931.

It is my recollection that Mr. Hubbell stated that when the 1930 balance sheet of the Long-Bell Lumber Company was available he would like a copy of it, and this request I sent on to Chicago. There was no conversation about the balance sheet, Defendant's Exhibit 6, after the receipt of it by Mr. Hubbell.

I remember that I delivered a balance sheet to Mr. Hubbell. I do not recollect the exact date, but I knew that it was for some period that ended sometime in the middle of 1931.

I presume that Defendant's Exhibit 7, which is a six-months' earning statement and balance sheet of the Long-Bell Lumber Company and subsidiaries for the period ending June 30, 1931, is the one. To the best of my recollection I delivered that sometime in July or August of 1931. Mr. Hubbell had asked whether I could get any kind of an interim report on the Long-Bell Lumber Corporation for any part of the year 1931. I told him I would attempt to do so, and this was sent out from the Chicago Office and delivered by me to Mr. Hubbell.

During the period subsequent to June, 1931, I had a discussion with Mr. Hubbell with reference to the repurchase or sale of these L. I. D.'s from the Equitable Life Insurance Company to Halsey, Stuart & Company. I don't have an exact recollection of the date but it was sometime in the early fall of 1931, subsequent to Mr. Windsor's return from his trip to the west coast. Mr. Hubbell expressed the desire to dispose of the bonds if he could get a satisfactory price for them at some time. He told me he realized the

market was not such that we probably could repurchase the bonds at a price which would be entirely satisfactory as of the date he talked to me about it, but that he hoped I would keep it in mind and if we had an opportunity to pay a satisfactory price for them at any time we could let him know so that he might go ahead and effect the sale. I think Mr. Hubbell spoke subsequently of the desire to dispose of the bonds several times over a period of two or three years, but I cannot fix the dates when it may have been.

I have no recollection of the return of the papers which I received from the Chicago office about the 14th of May, 1930, from the Equitable Life Insurance Company. I may have automatically received them and mailed them back to Chicago, or they may have been received in my office and mailed back.

Mr. Hubbell made a request in 1934 for further information regarding the L. I. D. Bonds. I don't remember the exact time, it was probably early in the spring of 1934.

Mr. Hubbell wished to know if I could supply the Equitable Life Insurance Company with transcripts covering the proceedings under which the various Local Improvement District Bonds had originally been sold. We naturally did not have those in Des Moines and I wrote to Chicago and asked that they either send them to me to give to Mr. Hubbell or that they send them directly to him.

Cross-Examination of Mr. Kelley by Mr. Gamble.

I am living in Pittsburgh now and have been there about a year and a half. I am thirty-five years old, and I taught for one year after I finished school. I have been with Halsey, Stuart & Company all the time since going with them in the latter part of 1926. At first I went to a training school that we had in the Chicago office at that time, which the firm conducted for the new men that came with the organization. It was not a sales school, but we were taught generally what the business was about and about our own firm. I was in that training school until the late fall or early winter of that year, which was 1926. In that training school we learned of the various departments of the organization and things of that kind. I learned that Halsey, Stuart & Company had other offices than that in Chicago. I knew there were quite a number of salesmen working out of the various offices in various cities over the United States.

In the late fall of 1926, after finishing the training school,

I spent eight weeks in the Sales Group in which Iowa was included. There was a group in the Chicago office designated as the Iowa-Nebraska and Colorado Group, with whom I spent a few weeks, which supplied men in that territory with information that they might request, took care of getting the confirmation of the bonds sold there, and generally supervised the sales activities in that area.

After those few weeks in the Iowa Group, I took over the territory that included the northwestern part of the State of Iowa and the northeastern part of Nebraska.

We did not have an office in northwestern Iowa nor northeastern Nebraska, and I worked through the territory selling securities, for a little less than two years there. I did not confine my activities to Sioux City, but that was what we called that territory.

Then I went to Des Moines, where we already had a small office in the Insurance Exchange Building. Another salesman, named Gibbs, worked in that office and I went in with him. He was there for a year or two, but later went into a different territory in Iowa. I had nothing to do with buying securities up to 1930 for Halsey, Stuart & Company, and have had very little to do with it since that time.

My business was the disposition of securities, although I occasionally bought securities from our customers. You might say I was the agent between the Chicago Office and the customers when they wished to liquidate, but so far as the buying of new securities was concerned, I had nothing to do with that.

The territory which I have served from the Des Moines Office was the City of Des Moines particularly, and a few counties surrounding it.

Mr. Gamble: How were you paid by Halsey, Stuart & Company for your efforts in 1930?

Mr. Johnston: Well, that is objected to, if the Court please. I do not think that is competent, relevant or material.

The Court: What difference does it make what salary he was making?

Mr. Gamble: I want to know the basis, your Honor.

The Court: How is that material?

Mr. Gamble: I think it is material to show the interest of this man. He is a witness, and he made considerable statements, and I think it will be developed that he was getting a commission on these sales.

Mr. Johnston: There is nothing extraordinary about that if that were so; but what is the materiality and relevancy of it?

The Court: Let him answer it.

The Witness: I was paid a salary and a commission.

If the profit in all transactions was the same for the house and that was shown me, the more bonds I sold the more money I would make myself. The commission was the same on all bonds.

I never sold any Longview Local Improvement Bonds before this offer of $85,000.00 to Mr. Hubbell in May, 1930. I do not remember any offerings of those bonds that I made at any time. I am sure that I made no study of the Longview Local Improvement Bonds before May, 1930.

The first time these particular bonds appeared on a Bonds on Hand circular was on Defendant's Exhibit 19, dated May 3, 1930. This lists several other issues, State bonds, City bonds, County bonds, District bonds, and then certain utility and perhaps industrial bonds.

I have no distinct recollection of having sold any Long Bell Lumber Company First Mortgage Bonds prior to May, 1930. I presume I may have offered the Longview Local Improvement Bonds, or any part of them, to other persons than Mr. Hubbell, but to whom it may have been I do not remember. We were calling on other people including insurance companies, individuals, banks and dealers, but I don't know whether I did or not ever make an offer of these $85,000.00 Longview Local Improvement District Bonds to anyone else.

When I called on Mr. Hubbell the first time, I had with me a circular covering one of the original offerings of the Longview bonds. I do not recall whether it was the circular dated the same as Plaintiff's Exhibit B-1.

The "bonds on hand" lists are sent to all the salesmen of Halsey, Stuart & Company. At the present time we receive them on Saturday, but I do not recall what day of the week they were then gotten out, nor the day I received them.

We did not receive circulars with the "bonds on hand" sheet necessarily, unless it was a new issue. If it was a new issue, the circulars did not necessarily come with the "bonds on hand" sheet, but I probably had circulars in my file in Des Moines on practically all of the issues which are listed on Defendant's Exhibit 19. It is my recollection that I had this circular, Plaintiff's Exhibit B-1, in my file in Des Moines before I got the list.

We were maintaining a sales representative office in Des Moines in May, 1930, but we did not have a very complete system of files. We had a stenographer.

I was in Des Moines from the latter part of 1928 until 1932, but I continued to call on some of the accounts in Des Moines until about January 1, 1936. The files, when we closed the office, came into Chicago. I believe that our desks and everything there were finally shipped in, but I don't know for sure because we sublet the office. We had a lease that ran to some future date and we sublet part of it with the furniture, so that I do not have a definite recollection as to whether that furniture and filing cabinets, etc., were finally sent to us or not. I am under the impression that they probably were. I have not seen the files from the Des Moines office recently.

When I went to see Mr. Hubbell in May, 1930, and offered these bonds, I told him we had a block of approximately $85,000.00 of the Longview, Washington, various Local Improvement District 6% bonds, maturing in 1938 or 1939, that we could offer them at par less one-quarter, and that these bonds, in addition to being payable from special assessments on property in various local improvement districts in Longview, Washington, were unconditionally guaranteed as to the payment of principal and interest by the Long-Bell Lumber Company. It is my recollection that I told him that, as he probably knew, the Long-Bell Lumber Company is one of the largest lumber manufacturing companies in the United States.

I made offerings of bonds to other life insurance companies in Iowa while I was there, but I did not particularly familiarize myself with the restrictions upon investments by life insurance companies in Iowa in 1930. I was more or less acquainted in a general way with utility investments, but outside of the public utility bonds I paid very little attention to the laws covering the investments of life insurance companies in Iowa.

I asked Mr. Hubbell if he would be interested in buying any of these bonds and if there was any additional information he would like to have. I also told him that the circular I was giving him was not an up-to-date one, that it had been published a few years previously.

My impression is that Halsey, Stuart & Company had bought these Longview Local Improvement Bonds solely on the guaranty of the Long-Bell Lumber Company, but I have no recollection of having told Mr. Hubbell that there was no justification for Halsey, Stuart & Company being in this financing except for that guaranty.

Mr. Hubbell asked for the annual report of the Long-Bell Lumber Company and also for some information as to how well the Local Improvement Districts at Longview

had been retiring their bonds and to what extent they had retired them to that time. He also asked for information covering the Local Improvement District laws in the State of Washington, and wanted to know whether I had any general information on the City of Longview itself, which I had not.

I asked Halsey, Stuart & Company to send me reports of the Long-Bell Lumber Company for the close of the year, December 31, 1929, and I believe that the balance sheet now identified as Plaintiff's Exhibit B-34, was sent to me, which I delivered to Mr. Hubbell before he bought any of the Longview Local Improvement District Bonds.

When I speak of "confirming" bond purchases, the only one who can confirm anything would be the one in our Chicago office in charge of the stock cards. He is the only one that has any right to confirm anything that we have for sale, because that person is in charge of our inventory.

I cannot confirm because of that fact that the bonds might be sold by someone else simultaneously with my sale and it is necessary for me to see whether the bonds are still available. The actual physical confirmation of writing out a sales ticket and the printing of a sales confirmation was done in our Chicago office; we did none of that in Des Moines.

I would solicit a customer to purchase securities and upon reaching an agreement with him so far as I was concerned, I would report it to the Chicago office. If they still had the bonds on hand they would confirm the transaction and it was a closed deal. I have had experiences where there might have been cancellations later, but so far as the formal confirmation was concerned we would not sell the bonds to anyone else as long as they were out on a confirmation.

I gave this balance sheet of the Long-Bell Lumber Company to Mr. Hubbell in May, 1930, because he had asked for it. I don't remember I had anything in mind particularly. He had requested that I get the annual report for him and so, as I always did when he made such a request, I took it to his office and gave it to him and told him that it was the annual statement which he had requested. I just gave him the annual report at that time. I have no recollection of giving Mr. Hubbell any additional information covering the Long-Bell Lumber Company at that time.

I believe that I gave Mr. Hubbell Plaintiff's Exhibit B-23, the schedule of the retirement of the bonds to that date in each district.

The envelope which had the general information concerning Longview was not sealed, nor was Plaintiff's Exhibit B-34 included in it. I don't know what was in that envelope, it was quite a bulky one. I looked in it and saw it contained quite a bit of data, so I simply replaced it in the envelope, all of it that I had received, and gave it to Mr. Hubbell just as it had come to me, in the same envelope. I did not undertake to read any of that data. I might have glanced at some headline and seen the name "Longview", but I made no attempt to go through it at all. I had no idea whether the data was favorable or unfavorable to those bonds. I wanted to make a sale of those bonds on the right kind of a basis; that is the basis on which I wanted to make the sale to him.

Q. And you still want to tell this jury, being a salesman and soliciting Mr. Hubbell, to sell him these $85,000.00 of Longview Local Improvement District Bonds, that you did not examine the contents of that envelope before you turned it over to him?

Mr. Johnston: I object to that, to the form of the question, if the Court please.

The Court: What is wrong about it?

Mr. Johnston: The implication should never be contained in a question of that kind, that the witness is not telling the truth, "do you still want to tell this jury". It is not a proper question.

The Court: I think I will let him answer.

The Witness: Will you repeat the question.

(Question read.)

A. That is definitely correct.

Mr. Hubbell asked me to procure a formal offering letter with respect to these $85,000.00 Longview Local Improvement District Bonds. It is my recollection it was made after I had procured and supplied Mr. Hubbell with the balance sheet and the envelope containing the general data with respect to Longview. I believe that after I gave him the data he requested that we make this formal offering to him so that he might present it to his Committee. I telephoned that request to Halsey, Stuart & Company's Chicago office for them to make the offering. I am quite sure that prior to the making of this formal offering no other information with respect to the Longview Local Improvement District Bonds or the Long-Bell Lumber Company was transmitted to Mr. Hubbell other than that I have already referred to. I have no recollection of any other information being given to him.

I believe Mr. Frank Wood's signature is on Plaintiff's

Exhibit B-24. He was the sales manager of the District that included Iowa in May, 1930.

I am quite sure that Plaintiff's Exhibit B-24 is the formal offering of the $85,000.00 of bonds which I had been discussing with Mr. Hubbell, and which formal offering he requested. It is my opinion that the statement, "We believe you have before you practically all the data covering this issue of bonds, but if you have any questions in mind we shall be pleased indeed to have you call Mr. Kelley or this office for anything that you may need," was referring to the data which I had supplied Mr. Hubbell at his request.

I think I approached Mr. Hubbell prior to May 17th, and that there was a verbal understanding that, when the bonds were available, we would confirm to him an additional $15,000.00. I remember no subsequent conversation with him excepting that I probably notified him that we had procured the additional $15,000.00 of bonds that we talked about prior to May 17th.

I have no definite recollection of having had access to the supplement to the annual report of the Equitable Life Insurance Company of Iowa listing its bond holdings.

Originally I learned that the Equitable Life Insurance Company owned Louisiana State Highway Bonds when some member of the company told me they had purchased those bonds a year or so previous to that time, shortly after I went to Des Moines. I probably did know what their holdings were but I do not have a recollection as to just what form the list of holdings might have been in.

I don't remember whether Mr. Hubbell or I suggested the exchange of the Louisiana State Highway Bonds for the Longview Local Improvement District Bonds.

The letter, Plaintiff's Exhibit B-55, dated May 13, 1930, addressed to me at the Chicago office would be so addressed because Des Moines was not a branch office and all correspondence to me was addressed Chicago office and was placed, through our Mailing Department, into an envelope that would go out to me from there.

I did not examine the contents of the envelope which enclosed the data accompanying the letter of May 13, 1930, being Plaintiff's Exhibit B-55. Although I have no recollection of it, I probably conveyed to Mr. Hubbell the information contained in the letter, "We are just advised that District No. 11 called $91,000 of their bonds today for payment May 27th. This might be of interest to Hubbell."

That letter was written to me by Mr. Wood. Although

the carbon copy is not signed, his initials are on the letter.

I understood him to mean by telling me to be in a position to answer any questions and to launch an aggressive sales conversation just what it says; that is, that I had been supplied with the information that Mr. Hubbell had requested.

Mr. Wood was in no position to know whether I was going to convey part of the information to Mr. Hubbell verbally, or whether I was going to turn the data over to him, and it was my opinion that he felt that I would be in a position to answer or supply through the data all the information that Mr. Hubbell requested from us.

I don't recall whether or not at that time I offered Mr. Hubbell, after the receipt of Defendant's Exhibit 19, being the "bonds on hand" list of May 3, 1930, any other bonds than the Longview Local Improvement District Bonds which are on the list. If I did not at that time I probably had previously or did at later dates, but I do not have an exact recollection.

It is my recollection that we had approximately $85,000.00 of the L. I. D.s at the time I was first talking to Mr. Hubbell. I had an order for the additional $15,000.00, and I was notified when that amount was available for confirmation to the Equitable Life Insurance Company. I don't remember the exact date, but it was sometime subsequent to May 17th. I had no conversation with Mr. Hubbell about the bonds at that time except that I undoubtedly notified him that we had obtained the bonds. I don't know where Halsey, Stuart & Company got them. I know that we had acquired them in the general market by our trading department, but I had nothing to do with that department. These bonds were not listed on any exchange, nor are any municipal bonds. It was a case of where we were acquiring bonds that we did not own prior to that time. When I speak of bonds being acquired in the market, I mean that they were not a new issue to us; it was not an original sale of the bonds. We had acquired them from other dealers or investors generally through the country, but who those may have been I had no information whatever.

It is my recollection that these Longview Bonds were sold to Equitable Life Insurance Company at $100 less one-quarter, which was the price involving a concession of a quarter to insurance companies.

I do not recall accurately as to the time I next offered Mr. Hubbell, for the Equitable Life Insurance Company,

any more of these Longview Bonds, but whenever we might have any bonds available, which was shown to me by their being listed on the "bonds on hand" sheet or through the daily bulletin we received showing the changes on the weekly "bonds on hand" sheet, I would offer them to the Equitable Life Insurance Company.

The next offer must have been approximately in the summer of 1930. I wrote the letter, Plaintiff's Exhibit B-42, from which it appears that the first offering was made in August, 1930. My recollection is that I merely offered the bonds to him and stated the price, with no further statements. It is my recollection that he asked for no additional information.

I don't recall any conversation with Mr. Hubbell about District No. 11. I don't recall definitely that I gave him the information contained in Plaintiff's Exhibit B-55, "We are just advised that District No. 11 called $91,000.00 of their bonds today for payment May 27th. This might be of interest to Hubbell," but I probably did, and I may have designated District No. 11 when I gave him the information. I presume that I did give him the information because it was passed along to me and I always gave him all information that we got on Longview at that time.

After this transaction in August, 1930, referred to in Plaintiff's Exhibit B-42, and referring to Exhibit B-44, I am quite sure that we made an offering to Mr. Hubbell of the $5,000.00 L. I. D. Bonds of District No. 11, 100%, referred to therein. The initials on that Exhibit are Mr. H. H. Smith's.

At the time of that offering, in September of 1930, I merely offered Mr. Hubbell the bonds that were available, designating the issue and stating the price, and I believe I also called attention to the fact that a block of bonds that we had previously sold to the Equitable Life and on which they had not given us delivery instructions on as yet, had been called for payment. I gave him no other information, nor did he ask for any.

Defendant's Exhibit 21, being a "bond on hand" list dated October 11, 1930, shows that we had available for sale on that date $193,000.00 of the Longview, Washington, Local Improvement District No. 11 Bonds, maturing May 27, 1938. I don't remember whether I had sold any of that particular district or not, but there apparently was one small block sold in September, from the letter already shown. I don't recall whether I sold more. It is my recollection that the availability of this $193,000.00 of Longview, Washington, Local Improvement Bonds was

first broubht to my attention by Defendant's Exhibit 21. Subsequent to the receipt of Defendant's Exhibit 21, I effected an exchange or sale of the L. I. D. Bonds to Mr. Hubbell in the par amount of $200,000.00. I don't recall whether I learned of the availability of additional bonds than those set forth in Defendant's Exhibit 21 from a change in our inventory position that would have been shown by our daily bulletin, or whether it was upon inquiry from our Chicago office. I don't have any independent recollection of it.

The date of confirmation of Plaintiff's Exhibit B-45 covering $200,000.00 Longview Local Improvement District No. 11 Bonds is October 16, 1930, but I cannot recollect the exact date.

I don't remember the exact date when Mr. Hubbell expressed the desire, previous to the middle of October, to dispose of the Chicago Tax Anticipation Warrants. To the best of my recollection he was asking some questions about the condition of the Chicago tax collections, or we were visiting about it in a general way one day, and he expressed the desire at that time. I had nothing to do with the Chicago tax collections whatever except that I was representing an investment house that was located in Chicago and occasionally went to Chicago myself, and he perhaps thought I might have some information on it. I don't remember that I had any information covering these tax collections at all.

At that time Mr. Hubbell expressed to me, without any solicitation on my part, a desire to make a disposition of the warrants at some time if he could get a satisfactory price for them, and I told him I would be glad to keep it in mind. Later I told him we might be able to work out an exchange on the L. I. D. Bonds and the Chicago Warrants, but at the time of my original conversation with Mr. Hubbell to the best of my recollection we had no L. I. D. Bonds. This original conversation was sometime before October 11th. It may have been a week or a month prior to that time. I don't recall that I did anything about seeing if I could work out a disposition of those warrants for Mr. Hubbell prior to October 16, 1930. I may have gotten a market on them for him or let him know approximately at what they were quoted. I believe Mr. Hubbell was familiar himself with about what they were selling for in the market.

Before I could make an exchange of L. I. D. Bonds for Chicago Tax Anticipation Warrants, I had to get authority from somebody else. I could discuss an exchange, but

I could not quote any prices. I could quote the price of the L. I. D. Bonds subject to it having been changed, but I could not quote the price that we could pay for the Chicago Tax Anticipation Warrants.

Before I did effect the exchange of the Chicago Tax Anticipation Warrants, my recollection is that I communicated with someone in the Iowa-Nebraska-Colorado sales group; either Mr. Smith or Mr. Wood, I don't remember which one. I talked to both of those men quite frequently on the telephone, a large part of my business between the Des Moines office and the Chicago office being done by telephone. I don't recollect the exact date I talked to them about those Tax Anticipation Warrants. They said they would communicate the price to me, which they did.

I gave Mr. Hubbell no further information about the Long-Bell Lumber Corporation before making this exchange with the Equitable Life Insurance Company for the $200,000.00 L. I. D. Bonds.

I believe the interest rates were higher in 1930 than today. I have a doubt as to different classes of bonds; we have a rather erratic market today.

Prior to May, 1930, I knew there was a bond issue outstanding by the name of Cowlitz County Consolidated Diking District No. 1. I presume that we had some connection with the underwriting because I had seen the name, but I didn't know who had done it. I did not know that the bonds of the Diking District were secured by assessments on property within the City of Longview.

In the sale of municipal bonds in 1930 and for some time thereafter, it was not the practice to go into the existence of overlapping issues.

We sold very few special assessment bonds, and I don't believe I am qualified to answer a question concerning the effect of other similar assessments upon the same property. I know that the question of overlapping debt, either general or special, was never discussed by me with the Equitable or with any of my other customers. I am quite sure that the other man in the Des Moines office of Halsey, Stuart & Company who was there for a year or so after I was there made no sales of securities to Equitable Life Insurance Company. It is my impression that he was there during part of 1930, but I may be mistaken. I forget just when he left Des Moines.

When I first went to Des Moines we had an office in the Insurance Exchange Building and my recollection is that we remained there through the balance of 1928, through

1929, and the early part of 1930. I have not attempted to check back into the time we made a lease with the Equitable Life Insurance Company for space in its building. I negotiated that lease to some extent, passing on information to the Chicago office as to what space could be gotten and at what price, but I had nothing to do with the actual signing of the lease or keeping any records covering the lease, as I remember it.

The only recollection I have of any conversations in May of 1931 with Mr. Hubbell or Mr. Windsor, or both, concerning the L. I. D. Bonds, was approximately that time, when either Mr. Windsor or Mr. Hubbell told me of the former's contemplated trip to the west coast and I offered to have Halsey, Stuart & Company advise someone in Longview that Mr. Windsor would be there and that we would appreciate any courtesies that they might show him at that time. I have no recollection of any other conversations at that time.

After Mr. Windsor made the trip I learned of his return from Longview and I had some conversations relating to the bonds after that time. I testified that sometime after November 11, 1931, I had a conversation with Mr. Windsor in which he came to my office, but I did not, in connection with that testimony, refresh my recollection by looking at the memorandum of November 11, 1931, being Defendant's Exhibit 16.

Mr. Hubbell, in the spring of 1931, after Mr. Windsor's Pacific Coast trip, read me parts of the report which covered the trip of Mr. Windsor to Longview, Washington. I do not have an exact recollection of any individual statements in the report. At other times later in the year 1931 I had talks with Mr. Hubbell in which he expressed the desire on more than one occasion to dispose of the Longview, Washington, Local Improvement District Bonds if he could do so at a satisfactory price.

I have no recollection that I ever made him a price on Longview Local Improvement District Bonds other than on the particular occasions when he said he wanted to dispose of them. I probably did communicate his desire to dispose of them to the Chicago office, but I do not remember what they replied. To the best of my recollection, one reason that Mr. Hubbell gave for desiring to dispose of the L. I. D. Bonds which I had previously sold him was the decline of business generally at that time, particularly industrial activities. I had sold him other bonds which he held during the year 1931, and he may have expressed a

desire to dispose of some of those issues, but I have no definite recollection.

He asked for the balance sheet in the spring of 1931 of the Long-Bell Lumber Corporation, and I got it for him, and later in the year when he wanted information for the six months' period I got that for him.

Q. But you did not give him any of that information in the year 1930 when you were trying to and succeeded in selling him these bonds?

Mr. Johnston: That is objected to as being purely argumentative. It has been gone over and I submit—

The Court: He may answer that question, if he can, but I think he answered it before. Go ahead and answer the question.

A. Yes, I gave him comparable information in 1930. He requested in 1930 and 1931 annual report for the previous year, and I supplied it to him each time.

I gave him either quarterly or semi-annual reports.

To the best of my recollection I first became acquainted with Mr. Windsor near the close of the year of 1930, which is when he became employed by the Equitable Life Insurance Company of Iowa. I did not know him before that, nor was I a social friend of his nor did our families visit each other. I don't know whether I knew at the time that Mr. Windsor was a cousin of Mr. Hubbell's.

I have refreshed my recollection as to the time of a certain conversation with Mr. Windsor by reference to Defendant's Exhibit 16, being a memorandum of November 11, 1931, but I had not seen this memorandum prior to the time I had the conversation with him. To the best of my recollection this conversation with Mr. Windsor, in which he came to my office, was in the latter part of 1931 or the early part of 1932. I fix that time from memory, refreshing my recollection only from a memorandum or statement that I made to Halsey, Stuart & Company, or its counsel in this case, either in 1934 or 1935, when I made up a statement of the recollection of the facts for counsel for Halsey, Stuart & Company.

When I had this conversation with Mr. Windsor my office was in the Equitable Life Insurance Building. No one else was officing with me at the time, nor was anyone else present.

He told me that I would be interested in knowing what the boys had been doing upstairs, and I understood by the boys he meant the people that were interested in the investments for the Equitable Life Insurance Company of Iowa, his employers. I asked him what they were doing

and he told me that they had been checking the various correspondence and data and whatever else we may have supplied them with covering the sale of the Longview, Washington, Local Improvement District Bonds to see if they might be able to find where we might have made a misrepresentation in order that they might attempt to get us to repurchase the bonds from them. He did go ahead to say that they had not found any misrepresentations and that I need not worry about it.

My recollection is that I transmitted the information to Mr. Ettinger in Halsey, Stuart & Company's Chicago office. He was successor to Mr. Wood as sales manager of the territory, and was my boss. Mr. Wood was my boss too, when he was there, but had left Chicago prior to that date.

I cannot remember that I said anything to Mr. Wood after that but I may have contacted him. I know I was rather surprised.

I have no recollection of any such statement ever being made to me by Mr. Windsor following his trip to Longview in the summer of 1931 that the L. I. D. Bonds were bad bonds or that Halsey, Stuart & Company should take them off the hands of the Equitable Life Insurance Company.

Redirect Examination of Mr. Kelley by Mr. Johnston.

I repeated to you that conversation, on the date I mentioned late in 1934, substantially in the language that I repeated it on the stand here.

I first learned of the issuance of the memorandum of November 11th, Defendant's Exhibit 16, in the month of April, 1939, when I came here for the trial of this case. That was the first time I ever knew there was such a memorandum.

At no time during the year 1930 did I have any of the information about the Long-Bell Lumber Company about which counsel for plaintiff repeatedly asked me. I knew in 1930 about the Long-Bell Lumber Company nothing beyond its general character, plus the financial standing at the close of the year December 31, 1929, as shown by their annual report for that year. In other words, the same information which I gave Mr. Hubbell.

I would not have any way of remembering whether I offered any particular bond to any customer in Des Moines, Iowa, where no sale was consummated. That's eight years ago.

Defendant's Exhibit 2, the digest of the Washington laws, was turned over to Mr. Hubbell together with the other items which I referred to, prior to the sale of the first block of the Longview Local Improvement District Bonds.

In Plaintiff's Exhibit B-55, Mr. Wood refers to copies of the Washington law covering the issues of special assessments. This is the same data which has been referred to as Defendant's Exhibit 2. The balance sheet referred to therein of the Long-Bell Lumber Company is the balance sheet which has been identified as the one dated January 1, 1930, covering the year 1929. The other data enclosed in the brown envelope is the so-called buying file which I refexred to in my testimony and the circumstances of the delivery of which I have detailed previously.

The statement "You can then launch aggressive sales conversations" is no different from the advice I was always getting from the Sales Manager with respect to every sale. Sales Managers were always telling me to make an aggressive effort to sell any particular securities that I was dealing with at the time.

In regard to the confirmations made by the Home Office, there were a great number of times that we confirmed bonds before the Finance Committee, or the Investment Committee I believe is the proper phrase, had passed or approved the purchase of any particular issue that we might be offering them. We would confirm upon the statement of Mr. Hubbell, if he was the gentleman with whom we were dealing. To the best of my recollection the Executive Committee in their subsequent meetings always approved any bond that might be confirmed on the basis of our conversations with Mr. Hubbell. I was asked whether I gave Mr. Hubbell in 1930 the quarterly or semi-annual earning statements of the Long-Bell Lumber Company. I did not have the interim reports during the year, nor was any such request made by Mr. Hubbell at any time in 1930 for such interim report, only in 1931.

(PLAINTIFF'S EXHIBIT B-55 admitted in evidence.)

(PLAINTIFF'S EXHIBIT B-56, being the same document as Defendant's Exhibit 16, admitted in evidence.)

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HOLDEN SMITH, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Johnston:

My name is Holden Smith, and I live in Des Moines, Iowa. I went with Halsey, Stuart & Company the latter part of September or the first of October, 1926. I first went into the training school, which was more or less of a review of four or five years of a commercial course. They attempted to give the college students a background in money, banking, credit, finance and also some study of the types of securities. There was very little training as far as sales are concerned. It was mostly information and knowledge of the investment business, and some study of the house.

After the training course, I was with the Iowa-Nebraska-Colorado group inside the Chicago office as a correspondent. My first duties were largely the writing of letters, the supplying of information to salesmen, taking care of tickets that went through the operating division, seeing that deliveries were completed as far as our customers' desires were concerned, and that sort of thing. Later on when I was Assistant to Mr. Wood in 1930 I also had some activity with the supervision of the salesmen and the direction of their work.

I am now a salesman for Halsey, Stuart & Company in Des Moines, Iowa, and surrounding territory. I have been covering that territory for approximately two years, from Chicago up until October of last year and since that time I have lived in Des Moines.

I often furnished Mr. Kelley with information upon his request, and I recall doing it in May and October of 1930. I have an independent recollection of giving information to Mr. Kelley over the telephone regarding Longview Improvement District No. 11 approximately at the time that the Equitable was giving consideration to the block of bonds in October.

I have seen Defendant's Exhibits 22 and 23 before, and from their dates I would imagine they were given to me on the 17th of October. My name appears on Defendant's Exhibit 23 on the bottom righthand corner and below that a check-mark I used to make when I had completed handling the transaction. My name is on there in the handwriting of Mr. Robert Simond, who either handed me Defendant's Exhibit 23 or sent it back to me from his desk.

After I received Defendant's Exhibit 23, I telephoned Mr. Kelley and gave him the information which he had requested. My recollection is that I read him this wire exactly as it appears here because there are three questions that are covered and to give the information specifically. I imagine I read the whole wire as it came to me. I assume this was on the morning of the 17th of October when the wire, which is dated the 16th, and sent as a night letter, would be received. This was information which he had requested, and I simply passed it to him over the telephone. After I had read the telegram, I indicated that I carried out my directions with respect to it by checking it off and then it would go to the files. It was my practice to check a memorandum of that kind to indicate that I had carried out the directions of whoever forwarded the information to me.

I have no specific dates in mind when I received letters from the Longview Company or the Long-Bell Company or from Alex Hay during 1931, containing information requested by Mr. Kelley, but any information of that kind that was requested would either come to me or Mr. Wood and would be forwarded to Mr. Kelley as soon as it was received.

Cross-Examination of Mr. Smith by Mr. Gamble.

I have no independent recollection as to the exact time of my telephone conversation with Mr. Kelley on the morning of October 17, 1930. I cannot recall whether the request that Mr. Kelley made for information was made of me or Mr. Wood.

FRANK A. WOOD, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination by Mr. Johnston.

My name is Frank A. Wood, and I reside in Summit, New Jersey. I have been in the investment business, principally in bonds, for almost twenty years. I am now Vice President of Otis & Company, in charge of the New York Office. Their main office is in Cleveland. I was with Halsey, Stuart & Company from the latter part of 1919 until the spring of 1937, and am no longer connected with them in any capacity whatsoever.

In the year 1930 I was Sales Manager, located in Chicago for the Iowa-Nebraska-Colorado Group, which comprised the salesmen in those three States. I have had experience in the sale of municipal bonds of various kinds and character, having in 1930 been engaged in their sale between ten and eleven years, my experience all having been with Halsey, Stuart & Company in the sale of municipal as well as public utility bonds.

My connection with the amendment made to the Iowa Insurance laws of 1927 or 1928, with respect to giving permission to insurance companies to invest in public utility bonds, was doing some statistical work along with Mr. Harley, who was with Halsey, Stuart & Company at that time as a statistician. The work that we did was presented to Mr. Adams, who, as I understand it, was the counsel handling the particular law for the Equitable and other insurance companies. We at that time gave them certain advice as to what we believed were the proper provisions that should be put in the law with respect to public utilities. We were invited to do that work, which was principally on public utilities, and it had nothing whatsoever to do with the municipal section of the law.

We offered to do something in connection with the municipal section but Mr. Adams declined, on the ground, as he said, that they had had sufficient experience and they did not need our advice or help. The law was subsequently amended so as to permit certain types of public utility bonds and railroad bonds to be eligible for investment by insurance companies.

In 1930 I knew that we had done some financing for Longview, Washington, and had sold some bonds of certain improvement districts in the city. I had nothing to do whatsoever with the original purchase or original sale of those bonds when they were distributed at the time of their issuance. I had no knowledge regarding the Local Improvement District bonds other than that contained in the circular. I probably knew that there was an issue of bonds known as Cowlitz County Diking District No. 1 Bonds, but I knew very little about that issue. I knew nothing about the location of the dikes, the character of the assessments, what lands were covered, nor any of the details with respect to that issue; I could not describe it.

In 1930 I knew only the general standing of the Long-Bell Lumber Company as being one of the very large lumber companies and one that had had, over a period of years, recognized success. I knew nothing about its financial con-

dition other than what was disclosed by its published statements. I had no occasion to go into that; it was not part of my work.

During 1930 it was the practice of Halsey, Stuart & Company to send to its salesmen weekly bonds-on-hand lists, such as Defendant's Exhibits 19 and 20. These went to all salesmen in all offices or branches wherever located throughout the country. I believe that the fact that Halsey, Stuart & Company had on hand, as shown by its bond on hand list, a block of various districts of Longview Local Improvement District Bonds came to my attention in the spring of 1930 about the time the lists marked Defendant's Exhibits 19 and 20, dated May 3 and May 10th, went out.

I knew Mr. Kelley, who was one of the salesmen under me in my division in 1930, located at that time in Des Moines, Iowa. I recall no conversation whatever with Mr. Kelley regarding the L. I. D. Bonds before receiving from him the request for information regarding them.

The first incident in connection with the sale of these L. I. D. Bonds in May of 1930 was when Mr. Kelley either 'phoned me or wrote me to say that the Equitable, through Mr. Hubbell, had an interest in Longview, Washington, Bonds, and apparently he had been engaged in some conversations with him. At that time he said that Mr. Hubbell desired some information about the Improvement laws in the State of Washington, a balance sheet of the Long-Bell Lumber Company, which was guaranteeing the bonds, and also any general information that we had regarding the City of Longview, and asked if I could procure that for him. I personally procured all of the information regarding the City of Longview and the Improvement laws from Mr. Simond, who was in charge of the Municipal Department. I am not quite sure whether I got a Long-Bell statement from him or from some other department of Halsey, Stuart & Company. Mr. Simond gave me what he called the buying file, which was in a large envelope when it came to me. I didn't examine it very carefully but I looked in it and I recall some printed matter and also some pictures of Longview.

The notices or information to salesmen were at that time put out on either blue or buff colored paper, and I think there were some of those in there, although I did not read them. I did not make a very careful examination, just a general survey. I put all of the documents that Mr. Simond had given me from the purchasing file back into the envelope which was forwarded on the 13th of May, 1930, or about that date, as disclosed by Plaintiff's Ex-

ibit B-55, to Mr. Kelley. Plaintiff's Exhibit B-55 refers o the documents which I have called the buying file as "the ther data enclosed in the brown envelope must be returned s it is part of our files." I think I sent the digest of the Vashington laws to Mr. Kelley at the same time.

Defendant's Exhibit 2 appears to be the summary of the Vashington laws that I prepared, or caused to be pre- ared, in its original condition except for a blue cover. 'laintiff's Exhibit B-34 is a copy of the balance sheet and uditor's report which was sent out at or about the same ime as the letter Plaintiff's Exhibit B-55.

Prior to the date of May 13th, I imagine I must have assed on the request for the data in Plaintiff's Exhibit 3-23 to someone else in the office.

I did not personally prepare it but I knew that such data ad been prepared and sent to Mr. Kelley on or about this ime in May, 1930.

In Plaintiff's Exhibit B-55, my statement "I think this overs all the points Mr. Hubbell brought up" was derived rom a knowledge of the points Mr. Hubbell had brought p gained by telephone conservations with Mr. Kelley.

There was no special drive whatsoever on by us to sell . I. D. Bonds distinguished from any other bonds. The tatement: "After you have looked over some of the data nclosed you will be in a position to answer any questions e might bring up, as well as launch an aggressive sales onversation," was the pep language that I incorporated to ny letters to salesmen. There was nothing special about his sale of L. I D. Bonds; it was a routine matter.

One phase of the information that I forwarded or had orwarded to Mr. Kelley in connection with his negotiations ith Mr. Hubbell for the sale of these bonds was rather nusual, in that I cannot recall of our ever having sent a uying department file out of the office. I would say that hat was a rather extensive effort to place before him the ata that we had. To that extent we went very much urther in the matter of furnishing information than would e customary and usual in such a sale.

After sending on this information and the letter to Mr. Kelley dated May 13, 1930, which is Plaintiff's Exhibit 3-55, the next step was Mr. Kelley telling me that they ere satisfied with respect to the bonds and would make purchase if we would send them a formal offering of onds; that is generally done. It may not be in written orm but it must be a formal offering.

Undoubtedly there was in the meantime some conversa- ion about making an exchange of these bonds for Lousi-

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ana 5s. I would not fix the price at which we would take those bonds in exchange. That would be done by Mr. Simond, or someone in his department. After they stated they were satisfied to send out this letter, I wrote the letter, which is Plaintiff's Exhibit B-24, dated May 14, 1930. When I said "We wish formally to offer you" I had in mind a formal offering as distinguished from the informal offering as made by the salesmen. Before writing the letter, which is Plaintiff's Exhibit B-24, I had not discussed the subject matter of the offer or the contents of the letter with any of the officers of Halsey, Stuart & Company. It was something I would write on my own responsibility as part of my duties as manager of this Sales Division. When I said "We believe you have before you practically all the data covering this issue of bonds, but if you have any questions in mind we shall be pleased indeed to have you call Mr. Kelley or this office for anything that you may need", I was referring to the data we had been sending out to him: the data in the brown envelope and the digest of the laws, the balance sheet of Long-Bell, the analysis of the various bonds in each district, which is Plaintiff's Exhibit B-23, which I referred to as going about the same time with my letter of May 13th.

When I wrote that letter of May 14, 1930, Plaintiff's Exhibit B-24,I did not consciously withhold from the Equitable Life Insurance Company of Iowa any information which I had in my possession relative to Longview Local Improvement District Bonds. I did not, at the time I wrote that letter, consciously withhold from the Equitable Life Insurance Company of Iowa any information which I had in my possession relative to the Long-Bell Lumber Company or its financial condition.

In the sale of municipal bonds in 1930 and years prior thereto, it was not the general practice to ascertain before purchase and before subsequent sale to purchasers, the outstanding issues of bonds of other municipal or public corporations covering the same territory as that covered by the particular municipal bonds that we were then buying or selling. Where it concerned an overlapping debt, by which I mean other obligations that might be outstanding at that time, very little attention was given to it. For example, if I were selling a bond of the City of Chicago, it would not have been customary or usual to go into the question of bonds of the Sanitary District, the Park Board, the School Board, or like bodies politic.

The practice of making no inquiries as to overlapping debts continued after 1930 until fairly recently, and applied

both to the purchase by the investment house when purchasing municipal bonds and the subsequent sale by the investment house to its customers.

I don't recall that I had any direct experience in selling to Equitable Life Insurance Company. I was acquainted with Mr. Hubbell and was in 1930 a large, in my estimation, policyholder in the Equitable Life Insurance Company.

Q. Now, Mr. Wood, let me ask you this: Did you, by the statement contained in the letter of May 14th, 1930, Plaintiff's Exhibit B-24, reading as follows: "We believe you have before you practically all the data covering this issue of bonds, but if you have any question in mind we shall be pleased indeed to have you call Mr. Kelley or this office for anything that you may need," intend to lead the plaintiff to believe that there were no other facts or circumstances within your knowledge substantially affecting the value of Longview Local Improvement District bonds?

Mr. Gamble: That is objected to. Just a minute, that is objected to.

The Court: The objection is sustained.

Mr. Gamble: The same ground.

Mr. Johnston: Now, if the Court please, that is the allegation in the bill of complaint.

The Court: I know. That is what this whole lawsuit is about.

Mr. Johnston: I know, but we have a right to show the mental—

The Court: I have sustained the objection. Ask another question.

Mr. Johnston: Q. Did you, Mr. Wood, by the statement contained in the letter of May 14, 1930, Plaintiff's Exhibit B-24, reading as follows: "You observe, of course, that this city has no funded debt other than these improvement bonds, and that the original debt has been materially reduced through retirement and maturity," intend to lead the plaintiff to believe that there were no other assessment bonds issued by any other municipal bodies than the Longview Improvement Districts that were liens or assessments to pay which were liens against real estate located in the City of Longview?

Mr. Gamble: That is objected to.

The Court: The same ruling.

Mr. Gamble: On the same grounds.

The Court: Objection sustained.

Mr. Johnston: Now, Mr. Wood, did you, in writing this letter, Plaintiff's Exhibit B-24, have in mind, at the time

of writing that letter, the Cowlitz County Diking District Number 1 bonds issued thereby, or bonds issued by any other municipal body other than the City of Longview?

Mr. Gamble: I make the same objection.

The Court: The objection is sustained.

The Witness: The statement in the letter "The City of Longview has no funded debt" was a true statement.

On or about the 4th of June, I wrote a further letter to Mr. Hubbell of the Equitable Life Insurance Company, which is Plaintiff's Exhibit B-40.

Q. I note in that letter that you referred to the prospective sale by the lumber company of the Longview, Portland and Northern Railroad, which information you say has recently come to your attention through the reports, the press and financial papers. In the writing of this letter to Mr. Hubbell, did you regard that fact, of the prospective sale of the Longview, Portland and Northern as something very favorable to the Long-Bell and to all of the issues of bonds in which it was interested?

Mr. Gamble: Just a minute, the letter speaks for itself. We object, as calling for the conclusion of the witness.

The Court: Whose letter is that?

Mr. Johnston: Mr. Wood's.

Mr. Gamble: He is trying to construe his own letter.

The Court: There is nothing ambiguous about the language is there?

Mr. Johnston: Well, I think that is the inference to be drawn from it, that he regarded it as favorable, that is true, yes.

The Court: Sustained.

Mr. Johnston: I think we have a right to find out what he did regard in that respect.

The Witness: After the letter of June 4th, 1930, I do not recall having had any further direct contact with the sales of L. I. D. Bonds to the Equitable.

I left the Chicago Office of Halsey, Stuart & Company in the latter part of that year but for several months prior to that time I was very busy introducing my successor to the work in the department and the various territories. Mr. C. M. Ettinger was my successor there.

Cross-Examination of Mr. Wood by Mr. Gamble.

I knew that Iowa had certain laws that governed the purchase of muncipals by life insurance companies for investment. I don't believe I had read that law. I

read my section of the law as it was amended. I don't recall the form that it was in.

I probably knew that Halsey, Stuart & Company had bought and sold Diking District Bonds for Cowlitz County District No. 1, but I do not recall having supervised the sale of any of those bonds. I could not state positively that I recall having read the circular which Halsey, Stuart & Company put out in connection with the sale of the Diking District Bonds. I don't recall having read it at or about the time I undertook to gather certain information as to the points Mr. Hubbell brought up in connection with the L. I. D. Bonds.

His request for information was in regard to the Washington Local Improvement laws, some general information about Longview and a request for the Long-Bell Lumber Company balance sheet and profit and loss statement. My impression was that Halsey, Stuart & Company had relied on the guaranty of the Long-Bell Lumber Company in buying and selling these L. I. D. Bonds.

I did not have some of the information which Mr. Hubbell requested, so I went to the other departments of Halsey, Stuart & Company to get it, but I don't recall to whom I went.

I did not get the monthly earning statement for the earnings of Long-Bell Lumber Company for the first three months or the first four months of 1930.

The source of my information for the reference in my letter of June 4th to the rumors in one or two financial papers about the possibility of the Long-Bell Lumber Company selling the Longview, Portland & Northern Railroad to certain railroads was the financial papers. I did not know it from the files of my own company.

The L. I. D. Bonds were acquired and sold by Halsey, Stuart & Company originally while I was working for them, but I had nothing to do with their acquisition and I don't recall making any sales of them.

Redirect Examination of Mr. Wood by Mr. Johnston.

The request which I received from Mr. Kelley on behalf of the Equitable was for the annual report of the Long-Bell Lumber Company.

J. G. GRUVER, called on behalf of defendant, being first duly sworn, testified as follows (by deposition):

Direct Examination of Mr. Gruver by Mr. Johnston.

I live in Kelso, Washington, and was, in 1930 and 1931, the County Auditor of Cowlitz County, and as such made an annual report on the finances of that County. Defendant's Exhibit 18 (now marked Defendant's Exhibit 27) is a printed copy of the Auditor's report which I made for Cowlitz County, Washington, for the year ended December 31, 1930.

On page 51 of the report appears a certificate certifying that the foregoing report is correct, and the original report contained the original certificate. The statement made in the certificate is correct. This Exhibit 18 is a copy which was printed for distribution to the citizens of Cowlitz County. The original is on file with the State Auditor. I made printed copies for distribution.

On page 34 of the report of the school districts listed under the heading "Detail of bond issues and outstanding bonds", those within the city limits of Longview are the bond issues on Nos. 112 and 117, and there is a little bit of territory in No. 36 that is within the boundaries of the school district of Longview.

There is a typographical error in the fourth item of Cowlitz County bonds, so that the fourth figure on page 34 which by error is printed $11,000.00 should be $110,000.00.

(Defendant's Exhibit 27, being the Exhibit which was identified by the witness Gruver as Defendant's Exhibit 18, was marked DEFENDANT'S EXHIBIT 27 and admitted in evidence.)

Mr. Johnston: I now desire to read in evidence, if the Court please, a stipulation which is embodied in the same stipulation that counsel read with respect to one of their Exhibits.

It is stipulated and agreed by and between the parties, by their respective counsel, that Defendant's Exhibit D for identification (now marked Defendant's Exhibit 28) being the report of the State Auditor of the City of Longview, Cowlitz County, Washington, covering the period from May 1, 1930, to April 30, 1931, is a true and correct copy of the original of said report on file in the office of the Clerk of the City of Longview, and that this report

was completed by the State Auditor, and a copy thereof submitted to the City Clerk of Longview some time during the month of July, 1931.

I offer so much of this report only as refers to the Longview Local Improvement District Bonds, the purpose of it being to show the collections and disbursements upon those bonds during the period covered by the audit, which is from May 1, 1930, to April 30, 1931, being the period in question in this case.

The Court: By whom is the stipulation signed?

Mr. Johnston: It was a stipulation in open court between the two counsel.

The Court: All right; it may be admitted.

(Exhibit D marked DEFENDANT'S EXHIBIT 28 and admitted in evidence.)

(DEFENDANT'S EXHIBITS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 offered and admitted in evidence.)

R. E. SIMOND, called as a witness on behalf of the defendant, being first duly sworn, was examined and testified as follows:

Direct Examination of Mr. R. E. Simond by Mr. Johnston.

I have already testified in this case as a witness called on behalf of the plaintiff.

From 1925 up to and including the years 1930 and 1931, I was in the municipal buying department of Halsey, Stuart & Company assisting Mr. Sleep in the purchase and sale of the municipal bonds.

I assembled the information descriptive of the L. I. D. Bonds themselves of Longview, Washington, and in general prepared the original circulars describing those bonds.

Plaintiff's Exhibit B-2 is the preliminary draft of the circular descriptive of the first issue of $1,483,000.00 of the L. I. D. Bonds. I assembled the information, prepared and put together that circular and the data therein contained. I obtained the data regarding the City of Longview to be incorporated in that circular from the Long-Bell Lumber Company, from their office in Kansas City and from their office in Longview.

I did not have before me at that time all of the data contained in Plaintiff's Exhibits B-25, B-26, B-27, B-28, B-29, B-30, B-31 and B-32, since some of it is dated in 1926 and some of it in 1927.

The information incorporated in Exhibit B-2 that "Longview has a frontage of seven and a quarter miles on the Columbia River" and the statement "by reason of its water transportation and because of its proximity to the timber stands of the Long-Bell Lumber Company and the Weyerhaeuser Company, Longview has been selected as the site for the vast lumber manufacturing plants of these companies, and is now a city of 7,000 population" was gotten directly from the Long-Bell Lumber Company organization. My recollection is that we got it from an address made by one of the Long-Bell land agents at Longview. Both of these statements appear in some of Plaintiff's Exhibits B-25 to B-32.

After I had prepared the preliminary circular Exhibit B-2, I submitted it to the Long-Bell Lumber Company's home office in Kansas City, and I also submitted the final draft to them for approval. That was true of every circular that I prepared for each of the three L. I. D. Issues.

I prepared the second of these circulars describing the issue on District No. 11, which is Plaintiff's Exhibit B-3, in the same manner, sometime prior to June 10, 1926, which was the date of the release. I had some of the data included in Plaintiff's Exhibits B-25, B-26, B-27 and B-29, but whether or not I had it all, I don't recall.

I received these advertisements and the descriptive circular called "Longview, Washington" at or about the time of issuance by the Long-Bell Lumber Company or its subsidiaries, about the dates shown upon the documents. I looked it over then and thought it might be helpful in presenting this to the salesmen, so we got a supply of them and kept one or two copies of each in my own buying file. I examined Plaintiff's Exhibits B-25 to B-29, inclusive, in connection with the preparation of this second circular, Plaintiff's Exhibit B-3, which I submitted to the Long-Bell Lumber Company. I think that each time we submitted a preliminary draft we had some correspondence in regard to it with the Long-Bell Lumber Company. I know we did on that one and the subsequent ones.

The wire of June 11, 1926, from Jesse Andrews to Halsey, Stuart & Co., carbon copy of a letter dated June 11, 1926, from me to Jesse Andrews; wire reply from Mr. Andrews dated June 14, 1926; and a letter from me to Mr. Andrews dated June 15, 1926, all of which dates precede the release of the circular, show that no circulars were released until they had had the approval of the Long-Bell Lumber Company.

In all of these circulars the statements under the heading "Longview" with respect to the frontage in miles on

the Columbia River, and Longview having been selected as a site for the Weyerhaeuser and Long-Bell Lumber Company Mills is substantially the same.

The third circular, Plaintiff's Exhibit B-1, the circular which the evidence showed Mr. Hubbell received, was prepared about the first week in April, 1927. That circular was submitted to the Long-Bell Lumber Company and we incorporated practically word for word the descriptive matter with which they supplied us.

After submitting a preliminary draft circular, the original of which is now marked Plaintiff's Exhibit B-1, I received from Mr. Demsey, Vice President of Long-Bell Lumber Company, the letter addressed to Halsey, Stuart & Company dated April 11, 1927, which is Defendant's Exhibit 33 and the typewritten matter attached to the letter headed "Longview", which is Exhibit 33-A, which came to my attention upon its receipt.

In putting Plaintiff's Exhibit B-1 in its final form, I adopted in substance substantially without change the typewritten matter headed "Longview" attached to this letter, Defendant's Exhibit 33. Mr. Kendall, who prepared the subject matter of this typewritten statement "Longview", I think was the advertising man of Long-Bell Lumber Company in their real estate department, with his main office in Kansas City.

(DEFENDANT'S EXHIBITS 33 AND 33-A offered and admitted in evidence.)

After I received Defendant's Exhibits 33 and 33-A, I went over the circular, adopted in substance the statements therein contained, and sent Long-Bell Lumber Company for their consideration a final revised copy, which I did in each case.

The statement contained in Exhibit 33-A with respect to the frontage on the river "Longview has a frontage of 7-1/4 miles on the Columbia River", and the second sentence reading "Because of its natural advantage and proximity to the timber stands of the Long-Bell Lumber Company and Weyerhaeuser interests Longview was selected as the site for the vast lumber manufacturing plants of these companies", I incorporated in the final form of the circular shown by Plaintiff's Exhibit B-1.

At the time I prepared these circulars and submitted them to the Long-Bell Lumber Company for their approval and received them back, I had never been to Longview, nor have I ever been there.

Q. Were these statements which you received from the Long-Bell Lumber Company, either in the form of literature printed by them, statements from their officials, or

statements such as these, the letter form matter prepared by their advertising man, relied upon by you in the preparation of these several circulars and particularly Plaintiff's Exhibit B-1?

Mr. Gamble: That is objected to as calling for incompetent and immaterial evidence, going to the conclusion of the witness, and invading the province of the jury.

The Court: Objection sustained.

Mr. Johnston: I think, if the Court please, we have a right, in view of the fact that scienter is involved—

The Court: You have in evidence the fact he got this information, and he used it. I think you have gone far enough.

When I prepared these circulars and used the information referred to, I had no other or different knowledge with reference to the two facts—namely, the frontage of 7-1/4 miles on the Columbia River and the selection of Longview as the site of the Long-Bell and Weyerhaeuser mills—than the information contained in those circulars and in the other data from which I obtained it. So far as I knew, no one else in Halsey-Stuart had any different understanding.

I have heretofore testified that the first time it came to my attention that the Long-Bell and Weyerhaeuser mills were physically located outside the city limits of Longview was at the time of the exchange of those telegrams on the 16th and 17th of October, 1930.

In the original sale of the three issues of L. I. D. Bonds, we used the final forms of the three circulars which I have testified I prepared, each being used in the sale of the appropriate issue.

The last bond of the original issue of the third and last series of L. I. D. Bonds, being the issue of $785,734.60, was sold early in 1928.

I personally had nothing to do with the sale of securities. I was not in the sales department and had nothing to do with contacting or following up customers. My only contact with the sale of the L. I. D. Bonds in 1930 to the Equitable Life Insurance Company of Iowa was indirectly.

Early in the month of May, 1930, either Mr. Wood or Mr. Smith said that through Mr. Kelley they were offering bonds to the Equitable and more specific information regarding Longview was desired. I think at the same time they asked for a digest of the Washington L. I. D. laws. They asked for the balance sheet, which I said I would have to get from another department, and any information that we could give them that would show generally what Longview was and the conditions there.

I went to the corporation department to get a copy of the balance sheet. The laws, I think, I got from Mr. Lombardi, or at least through Long-Bell. I got a copy of the legal opinion which accompanied the bonds we had at that time. I collected the various showing which we had obtained from the Long-Bell Lumber Company, the roto-gravure section, the copy of the Saturday Evening Post advertising matter, and a booklet that we had on Longview. I incorporated, because it presented a summary of the whole thing, what I called a sales memorandum of five or six pages, that quoted from an address by Mr. Lambeth on the City of Longview, that seemed to assemble in one document all these other showings.

What I call showings, I got from my buying file, which I maintained for my own convenience on every issue we bought, and I had such a file in this instance from which I obtained the information. Plaintiff's Exhibits B-25 to B-32 were the information I had in my file. Whether these are exactly the copies, I cannot now say because we had a supply of them.

You have shown me the original cover of the buying file that I kept. Looking at that file I find that there are other things which I took out and put with the documents which I have just identified, Plaintiff's Exhibits B-25 to B-32. The first is an address by Mr. Long and the second a copy of my sales memorandum of October 15, 1925, together with a copy of the notice to salesmen with respect to the release. Both the group of papers, Defendant's Exhibits 35-A to 35-H, of October 15th, 1925, and the pamphlet entitled "Address by Robert A. Long" marked Defendant's Exhibit 34, were selected by me and put with the other documents. All of these showings that I took out of the buying file I gave to Mr. Wood with the understanding that he was sending them to the Equitable Life Insurance Company. I asked therefore that they be returned because they were my file copies. I put them in the cover and then inside a larger brown envelope. I sent from my purchasing file all of the data relating to Longview, as near as I can recall, except the three purchase tickets covering the respective blocks, which had nothing to do with the City of Longview, and sent the balance complete. I kept nothing in my file that I had relating to the City of Longview and turned it all over to Mr. Wood with the instructions already stated. I think most of this file came back. Where we indicated we had additional copies like this printed matter we said they could keep them. My sales memo and that other information I wanted back, and my recollection is that it came back. I haven't any definite recollection exactly when it came back

but I know several months later I had a request for additional information and we advised that office that my files were out, and subsequently I was able to supply that information, my files having been returned. That request came from a customer other than the Equitable or the salesman dealing with the Equitable, and at that time the files were denuded of all of this matter relating to Longview, while at a subsequent date I found at least some of the matters there.

I also supplied information as Mr. Kelley requested it of his Chicago group.

On or about the 16th of October, 1930, I sent the wire identified as Defendant's Exhibit 22 to Mr. Alex Hay at Mr. Smith's request. I received as a response to that wire, the wire from Mr. Hay identified as Defendant's Exhibit 23. I passed this along to Mr. Smith. My handwriting appears in the lower right-hand corner on Defendant's Exhibit 23. Mr. Smith was then Mr. Wood's assistant in the Iowa-Nebraska-Colorado group.

In Defendant's Exhibit 22, I refer to an important account interested in a substantial amount. The firm to which I referred to was the Equitable Life Insurance Company, and I knew that at the time I sent the telegram.

Through Mr. Wood's group I received during 1931 from time to time requests from the Equitable Life Insurance Company for information regarding Longview and the L. I. D. bonds. So far as I know, in each instance we complied with those requests, and if we did not have the information we obtained it from the Long-Bell Lumber Company and forwarded it to the Equitable.

Mr. Kelley transmitted to me the request of the Equitable that I write a letter out to Longview prior to Mr. Windsor's visit there the latter part of May or early in June, 1931. I wrote a letter out there to extend him every courtesy.

In my position in the buying department I did not personally have any knowledge regarding the Long-Bell Lumber Company's financial condition other than that reflected by the statements that came to my attention.

Mr. Johnson: Calling your attention, Mr. Simond, to Defendant's Exhibits 33 and 33A, and particularly 33A, I will ask you whether or not you believed those statements as prepared by the Long-Bell Lumber Company with reference to the City of Longview to be true and accurate at the time you used them in formulating the circular?

Mr. Gamble: Just a moment. That is objected to, calling for immaterial evidence, a self-serving declaration. The facts speak for themselves,—and it is invading the province of the jury.

The Court: I think he already told what he did after he read it, and I think I will sustain the objection.

Mr. Johnston: Q. Did you have any reason at that time to doubt the accuracy or truthfulness of the statements contained in the memorandum prepared by the advertising manager of the Long-Bell Lumber Company describing the City of Longview?

Mr. Gamble: Just a minute, the same objection.

The Court: I think I will sustain that objection.

I said that in buying these L. I. D. Bonds I relied principally upon the guaranty of the Long-Bell Lumber Company. In 1930, after some five or six years of growth and development of the City of Longview, it was no longer true that we attached no value to the assessments levied to pay off the bonds. In 1930 the collection of assessments had retired approximately one-third of the bonds.

At the time of the sale in October, 1930, of $200,000.00 Longview Local Improvement District Bonds to the Equitable Life Insurance Company, we had a demand for a substantial block of those bonds from other sources. I think it was the 17th of October, and was for $100,000.00 or more of the bonds. By that time we had confirmed the sale to the Equitable.

The Cowlitz County Consolidated Diking District Bonds were publicly sold and advertised in the normal course of business by Halsey, Stuart & Company. There was no secret about that issue or its distribution. The Diking District roughly covered about 11,000 acres, of which I believe about 3000 acres, not quite a third, was represented by acreage within the City of Longview.

Cross-Examination of Mr. Simond by Mr. Gamble.

Plaintiff's Exhibit B-2 is a draft of the first circular concerning the sale of the Longview Local Improvement District Bonds, and says "preliminary" on the printed page. It is dated October 19, 1925. This was the preliminary draft of the first circular and after its preparation a preliminary circular in connection with the first offering of the Longview Local Improvement Bonds was issued.

Plaintiff's Exhibit B-3 is the circular in connection with the second offering of those bonds, those of Local Improvement District No. 11, issued June 10, 1926. The date is put on these circulars when we draw it up, and the printer prints that date.

My purchasing file contains certain data, and of the

printed matter we had more than duplicates, we had a supply. I told Mr. Wood about those which Mr. Hubbell might retain. I did not write anything about it.

Plaintiff's Exhibit B-57 is an exchange of wires over our private wire system addressed to me from the Philadelphia office, dated November 19, 1926. It is signed by Brown, but I don't recall who he was. The pencil writing on the bottom of Exhibit B-57 is my reply in my handwriting, which says: "Of Districts we have handled all relatively small in area and pop., though we haven't exact data. Having handled them solely on Long-Bell guaranty, we were not concerned. District No. 11 is a sewer district formed to complete sewer construction begun by city and takes in most of the city." That was my opinion in November, 1926; I didn't know; it was just my opinion, which I had gotten from casual conversation with Mr. Sleep at various times.

The signature on the document in this case entitled "Answer of Halsey, Stuart & Co., Incorporated," is my signature, and I swore to it. In that answer it is clearly stated that the fact as to whether or not the lumber mills of the Long-Bell Lumber Company and the Weyerhaeuser interests were within the city limits of Longview was not known to the defendant until after the sale of the Local Improvement District Bonds to the plaintiff. That came to my knowledge in response to my wire to Mr. Hay on October 16, 1930. That was after the sale of the first block to the Equitable but before the sale of the $200,000.00. I did not necessarily know that we sold the Equitable Longview Local Improvement District Bonds in 1931. I was not familiar with every sale that went through.

I made the statement under oath that, with respect to the location of plants of the Longview Concrete Pipe Company, Pacific Straw Board and Paper Company, Magor Car Corporation, Standard Oil Company, Central Mill Works and Longview Fibre Company being within or without the limits of the City of Longview, Washington, Halsey, Stuart & Company had no knowledge until long after the sale of the Local Improvement District 6% Bonds.

I assume I wrote the letter dated May 9, 1927, to Alex Hay, Tax Agent, Plaintiff's Exhibit P-43, which bears the initials "R. E. S. :MES." I assume he replied to my inquiry what general bonded debt the city had incurred, if any, and whether the general debt included any water debt payable from direct taxation. The letter dated May 16, 1927, addressed to Halsey, Stuart & Company, signed "Alex. Hay, Tax Agent", Plaintiff's Exhibit P-44, would

seem to be a response to Exhibit P-43. He advised me that the water system was privately owned and there would be no tax in connection therewith. Plaintiff's Exhibit B-40, dated June 4, 1930, is from Mr. Frank Wood of Halsey, Stuart & Company to Mr. Hubbell.

I would not know what capital assets Mr. Wood had in mind when he stated: "Incidentally I think you might be interested in knowing that within the past few days they have undertaken the retirement of a very substantial amount of Long-Bell Lumber Company Mortgage Bonds, from funds which became available from the sale of capital assets not necessary to the successful operation of this Company." I did not know that in June, 1930, Mr. Long had reported to Mr. Stuart the sale of the power house in Longview to the Washington Gas & Electric Company.

I was aware that the Cowlitz County Diking District Bonds were sold publicly by Halsey, Stuart & Company and, I think, one associate on the Coast. My recollection is that we obtained the information that there were 11,000 acres in the Diking District and 3,000 acres in the City from the County and from the Long-Bell Lumber Company sometime at or about the time we bought the bonds. We knew at the time we bought the bonds and obtained the information that the assessments to pay off these Diking District Bonds were, in part at least, laid on the lands within the city. We knew they were anticipating assessments in 1930 and prior thereto.

Redirect Examination of Mr. Simond by Mr. Johnston.

The Long-Bell Lumber Company paid its assessments for the year 1930 in full on all property in the City of Longview, which assessments fell due in 1931. This question of paying assessments in full on improved property was something that, for the most part, occurred subsequent to the year 1930.

At the time I prepared and sent out the first circular on these bonds, I had before me the original or a copy of the letter from Mr. Lambeth, which is incorporated in the notice to salesmen dated October 15, 1925, marked Defendant's Exhibit 35, and I also had it before me when I prepared the final circular for the first issue of the L. I. D. Bonds in 1925.

When the answer was prepared and I signed it, I was relying upon my recollection as to the time when the information came to me. It was my understanding at the time. I did not have the telegraphic correspondence, De-

fendant's Exhibits 22 and 23, before me. In fact, this correspondence was not called to my attention until we got into the preparation for the trial of this case within the last few weeks.

I did not have an opportunity to go through and did not go through all of the files of Halsey, Stuart & Company at the time we prepared the answer.

The statement by Mr. Wood in his letter of June 4, Plaintiff's Exhibit B-40, referring to the retirement of a large amount of bonds from the sale of capital assets concerns first mortgage bonds, not L. I. D. Bonds.

In the one instance, when Halsey, Stuart & Company originally discounted some of the contractor's warrants, we did so because they were guaranteed by the Long-Bell Lumber Company.

JESSE ANDREWS, called as a witness on behalf of the defendant, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Johnston.

My name is Jesse Andrews, and I reside in Houston, Texas, where I am a lawyer with the firm of Baker, Botts, Andrews & Wharton. That firm has been in existence since 1867, and now has something in excess of forty lawyers and partners.

Our firm became General Counsel for the Long-Bell Lumber Company in 1912, and transacted business by correspondence and occasional visits to Kansas City.

In 1918 a request was made that one member of our firm come to Kansas City. I went, and was there very frequently during 1918 and 1919, and then at the request of the Long-Bell Lumber Company I remained there from 1920 to the close of 1935, establishing an office in Kansas City that was carried on in the name of Baker, Botts, Andrews & Wharton.

It was particularly true during the last twelve or fifteen years of my stay in Kansas City that I participated very actively not only in respect to legal matters affecting the Long-Bell Lumber Company but also business matters and, therefore, became very familiar with all of the ramifications of this Lumber Company and its subsidiaries.

The Long-Bell Lumber Company beginning in the year 1930 was one of the largest, if not the largest, lumber manufacturing companies in the United States. It had

mills in Longview, Washington, which were the largest saw mills that had ever been constructed. It had a large lumber manufacturing plant at Weed, California, which is at the base of Mount Shasta, in northern California. It had saw mills in Texas and Mississippi, and hardwood plants in Louisiana and Arkansas. It had a large number of retail lumber yards located in Kansas, Oklahoma and Texas, and several yards in the State of Washington. It had large plants in Louisiana and Arkansas for preparing posts, poles and piling, with preserving material, and it had large interests in cut-over lands in the States of Mississippi, Louisiana and Texas.

The Company began business under the name of R. A. Long & Company in 1875, and was incorporated in 1884. I was familiar with the financial condition and set-up of the Long-Bell Lumber Company as reflected by its books, and I think that at the beginning of 1930 the value of the assets of the Company was in excess of $100,000,000.00, with about $50,000,000,00 in surplus, which latter is the difference between its assets and its liabilities.

I was, in the year 1930, devoting, with Mr. Long and some of the other executives of the Company, a good deal of attention to the Company's affairs. I devoted the major part of my time to the Long-Bell Lumber Company. A great deal of it was taken up in conferences with Mr. Long, who was chairman of the Board, and at that time eighty years of age, but well preserved and quite active; with Mr. Nelson, who was then, as now, President of the Company; and with Mr. Ramsey, who was then, and now is, a Vice-President. I should say that Mr. Long, Mr. Nelson, Mr. Demsey and I conferred more about financial matters than did any other members of the organization. Mr. Tennant was the Chief Operating man, and he at that time, and for five or six years prior thereto, had resided in Longview, Washington.

The Company had had a fairly prosperous year in 1929. It had owned since 1919 a very large body of timber near Klamath Falls, Oregon, near which it did not at the time have a mill nor propose to erect a mill, and which it desired to sell. During the year 1929 it had made two sales of fairly large tracts out of this large body of timber to two of the most successful operators in Klamath Falls, and had in that way added a considerable amount to its surplus, closing the year 1929 with an addition to surplus of about a million and a half dollars.

The price of manufactured lumber to saw mills was

somewhat better in 1929 than it had been in any of the three preceding years. While the stock market crash had occurred, business was generally upset, and the rate of interest had gone up and in that way acted as an embargo on residential building, nevertheless we looked forward to an improvement in 1930, and I would say that conditions were normal.

I knew in the first part of 1930, only in a general way, of the relationship of the Long-Bell Lumber Company to its commercial banks. I had not at that time had much contact with them.

It had been Mr. Long's custom for many years, just after the first of the year after the statement was prepared for the preceding one, to call on his commercial bankers in Kansas City, St. Louis, Chicago, New York and San Francisco. The Long-Bell Lumber Company had, and had had for some years, a $9,000,000.00 line of credit at the various banks. I mean by that that these banks had indicated a willingness at the beginning of the preceding year to accept Long-Bell's paper in an amount which for the eight or ten banks involved would aggregate $9,000,000.00. It was Mr. Long's custom to make these calls whether he intended to borrow anything from the banks during the succeeding years or not, but I had not, prior to that time, participated in any of these calls.

In 1927, Long-Bell Lumber Company owed the banks nothing, having done no bank borrowing. In 1928 its borrowings were about $2,250,000.00, and at the close of 1929 it owed the banks $4,000,000.00, according to my recollection.

In the spring of 1930, after the annual statements and audit had been prepared for 1929, Mr. Long made this usual trip to all of the banks. I have refreshed my recollection about what occurred, and Mr. Long, Mr. Nelson and Mr. Demsey made a trip to call on the banks in the usual way. It was well known that the Mercantile Commerce Bank of St. Louis had declined to renew its $500,000.00 line of credit for the year 1930. The Long-Bell Lumber Company had remaining nine other banks with a line of credit of about $8,500,000.00. The Equitable Trust Company, which had at about that time been merged into the Chase Bank, was one of the banks that had been extending a line of credit to the Long-Bell Lumber Company for some years. Prior to the merger the Chase Bank had no business with the Long-Bell. The Chase National Bank's note falling due sometime in the year 1930 had been paid by the Long-Bell Lumber Company at its maturity, and

after the payment of that bank indebtedness the Long-Bell Lumber Company was no longer indebted to the Chase National Bank.

The suggestion relative to the organization of the Long-Bell Lumber Company was called to my attention in May of 1930, but nothing was done at that time. I gave it no consideration, and though I naturally thought about it and turned it over in my mind it was not something that I regarded then as a probable eventuality. Being busy with other matters, I did not give it a great deal of consideration.

I would say that in the latter part of July or the first of August the question of organization of the Sales Company was first taken up by the Long-Bell officials and given serious consideration. I received a telephone message or telegram from either Mr. Long or Mr. Demsey to join them in New York, where they then were. I was there the first week of August in 1930, and as far as I know it was the first time that the subject was given earnest consideration. At that time the Chase National Bank was not a creditor of the Long-Bell Lumber Company and held none of the Long-Bell Lumber Company notes. The suggestion came from Mr. Herman Place, one of the Vice Presidents of the Chase National Bank, who had come there when the Equitable was merged. There was no demand made, because the Company owed the Chase Bank nothing. Naturally the Company desired to have a line of credit with the Chase Bank, and in the conversation which they had with Mr. Place in August, he said that in order for the Chase to renew the line it would be necessary to form this Company. The proposal was that we consider the matter and that if it were done it would, so far as the Chase was concerned and so far as Mr. Place's recommendation to the other banks, carry with it a binding obligation on the part of all the banks to extend a definite line of credit of $9,000,000.00 to the Long-Bell Lumber Company, or to the Sales Corporation, for a definite period of time so that there would be no uncertainty about the credit which would be available to the Long-Bell Lumber Sales Corporation. The period of time for which the banks were to be obligated to extend a definite line of credit was a detail that was not settled at the time I am now speaking of, which was the first week in August. Mr. Place had discussed this matter with Mr. Long and Mr. Demsey, and they had desired to have me have the benefit of Mr. Place's views. I came down and sat in with them in conferences, and we left to give the matter further consideration. At that time

no decision was reached as to whether we would or would not form this Sales Company and secure this bankers' syndicate agreement. Mr. Demsey and I returned to New York about the middle of September, I having made up my mind at that time and advised Mr. Long and Mr. Demsey and Mr. Nelson that it was a desirable thing to do. We conferred further in New York with Mr. Place and his counsel, Mudge, Stern, Williams & Tucker, as it is now, about the details of putting the proposal through. I was there about a week. During this time there was a tentative draft made of the loan agreement and some discussion of what the nature of the newly formed company would be, what assets would be transferred to it, what obligations it would assume, what line of credit each bank would bind itself to, how long that credit would extend, and what the rate of interest would be.

When I went back to New York in September, I had reached the conclusion that this was the desirable thing to do. I thought we would organize a company, of which all the stock would be owned by the Long-Bell Lumber Company and which would be as strong as possible financially. That company would have good credit with the banks, credit that was represented by a written agreement, as to which there would be no question or doubt; that it would operate the mills of the Long-Bell Lumber Company on a reasonable basis, and ought to produce substantial revenue or earnings at the end of each year; and that it would greatly strengthen the position of the Long-Bell Lumber Company. I thought would make it impregnable. Those reasons were discussed with the officials of the Long-Bell Lumber Company and they concurred in my judgment.

Upon our return to Kansas City from New York in the middle of September, I set about to complete a draft of the charter, but more particularly the operating agreement that would be entered into between the subsidiary on the one hand and the parent company, the Long-Bell Lumber Company, on the other, and to consider what properties could or should be transferred to the subsidiary and what debts of the parent company should be assumed by the subsidiary. By correspondence with New York we had a fairly complete set of papers and plans by the end of September, and Mr. Demsey and I came to Chicago the last of September to confer with Mr. Waldeck, the Vice President of the Continental Bank, with whom Mr. Long had had his dealings for many years, and acquainted him in more detail with what was proposed and ascertained whether or not that met the approval of the bank, and we found out it did.

Then we went to St. Louis and took the matter up with the First National Bank there, and then we went out to San Francisco in October and did the same thing with the two banks in San Francisco, the Bank of California and the Anglo-Paris Bank, all with a like result.

We hoped that the transfer of assets to and the assumption of liabilities by the Sales Corporation would be effected the first of November, and the accounting officers at the various mills and operating divisions were given instructions to make changes in their accounts effective the first of November. The deeds were not passed and the plan was not made operative until about the 9th of December, but it was made operative in a retroactive way so that the Sales Corporation got the benefit of the operations from the first of November, 1930.

I don't know of any current pressing demands made of the Long-Bell Lumber Company during the year 1930. It had retired its bonds considerably in advance of the schedule required and had provided the securities under the mortgage, which was in excess of the requirements of the mortgage.

Q. Mr. Andrews, if it was not necessary therefore to have this money for pressing, immediate demands, what was the purpose of this organization?

Mr. Gamble: Wait a minute, I object to that as calling for a conclusion and argumentative.

The Court: I will sustain the objection to that.

Mr. Johnston: Q. What was the end sought to be acquired?

Mr. Gamble: The same objection.

The Court: All right. The same ruling.

* * * * * *

Mr. Johnston: Q. Mr. Andrews, did you or the other officers of the Long-Bell Lumber Company, in forming the sales company, regard your action and decision in so doing as weakening the financial position of the Long-Bell Lumber Company?

Mr. Gamble: Wait a minute. That is objected to as calling for the witness' conclusion and is argumentative.

The Court: I will sustain the objection.

Mr. Johnston: Q. Mr. Andrews, is there anything further in connection with the sales company that you had not given us with reference to the details?

Mr. Gamble: That is objected to, as it takes in a pretty broad field, and it is indefinite and immaterial.

The Court: I think you could limit that a little bit, Mr. Johnston.

Mr. Johnston: Well, if the Court please, it seems to me that I am entitled to find out from the witness this fact, which is all that I am desirous of doing.

Here was this organization, the Sales Company, which was completed in the fall of 1930. What I want to show is that in the judgment of the officers of the Long-Bell Lumber Company that was a constructive move, a constructive step, securing this permanent line of credit and was not something which was done, as has been intimated, as a matter of self preservation or as a matter of necessity.

The Court: Isn't that one of the ultimate facts which the jury is to pass on?

Mr. Johnston: Well, I do not see how they can, without having the state of mind of the officers.

The Court: Well, I think he has given you that in great detail. He said they all favored it. He went ahead and told you all of these successive steps taken.

The Witness: Prior to the formation of the Sales Company, Mr. Demsey, a financial officer of the Long-Bell Lumber Company, made a forecast of the earnings of that company in and through the year 1931. It showed that even if business conditions did not improve any, the company would go through the year 1931 without the necessity of increasing its bank indebtedness over what it then was, paying all of its obligations as they matured through the year 1931. The plan provided that the directors of the subsidiary company, without the necessity of any additional consent, lend as much as $500,000.00 to the parent company at any time, and, with the consent of what was called in the plan an Advisory Committee, could lend an additional sum. The lease agreement between the subsidiary, the sales corporation, which was to operate the mills, and the parent company, provided that the subsidiary should have the use of all the mills and all of the plants at a rental no more than equal to the taxes and insurance, without depreciation, and that the subsidiary company could cut timber which the Lumber Company owned by paying not more than the book value, and it was assumed that the excess which the subsidiary would earn over the book value would be ample and would provide the Long-Bell Lumber Company with any additional money that it needed for its purposes.

In so far as the ability of the Long-Bell Lumber Company to obtain cash with which to meet cash requirements, the plan increased or improved the liquidity of the Long-Bell Lumber Company.

The Long-Bell Lumber Company made a deed to its properties to the wholly owned subsidiary, the Long-Bell Lumber Sales Corporation. It owned all the stock of that company, and the directors of the Sales Company were the same as those of the Lumber Company.

I was familiar with the sale of the Longview, Portland & Northern Railroad, and handled the details of it. In 1920, the Long-Bell Lumber Company owned and operated ten large saw mills in the south and was the largest producer of lumber in the country. It could see the time when the lumber in the south would be exhausted and decided not to go out of business, but to continue, and in 1919 and 1921 it bought large tracts of timber in the Pacific Northwest, first in Oregon, and then in Washington. This timber, of which there were eventually seven billion feet, lay in a body, the nearest part of which was about thirty miles from the Columbia River, midway between Portland and the Pacific Ocean.

The Longview, Portland & Northern Railroad was a wholly owned subsidiary of the Long-Bell Lumber Company, and it built a railroad about thirty miles in length down the west bank of the Cowlitz River, connecting this body of timber with the mills which were located in the valley, at the confluence of the Columbia and the Cowlitz Rivers, which the Long-Bell Lumber Company purchased and which is referred to as Longview.

It was not the desire of the Long-Bell Lumber Company to build this railroad in the beginning, nor was it then thought necessary, because on the opposite side of the Cowlitz River is a double track high-speed railroad owned by the Northern Pacific but upon which the Great Northern and the Union Pacific had operating rights of 999 years. Because it was a high-speed track, these railroads in 1923 objected to the movement of log trains, some of which have as many as eighty cars of logs on a track alongside of those on which their passenger trains would be operated. Because they refused to permit the movement of log trains over their railroad, which came within seven miles of the timber that I have spoken of, it was necessary for the Long-Bell Lumber Company, through its subsidiary, to build the railroad.

They were desirous of liquidating that investment whenever an opportunity presented itself, and such opportunity did present itself in February, 1930, at which time a contract of sale was entered into between the Long-Bell Lumber Company, acting for the subsidiary, and the subsidiary, with the three railroads that I have mentioned, to

which was added a fourth, the Chicago, Milwaukee, St. Paul & Pacific. A contract was entered into whereby these four railroads agreed to purchase the south twenty-three miles of the Longview, Portland & Northern Railroad track, including the terminals and the passenger depot at Longview, and pay $4,265,000.00, subject to the approval of the Interstate Commerce Commission, which approval was forthcoming. The sale was closed on the 1st of November, 1931, with the railroads paying $4,265,000.00 for the track and at the same time entering into what was regarded by the operating people of the Long-Bell Lumber Company as a favorable operating contract over the double track to which I have previously referred. That price, it is my recollection, represented cost of the railroad to Longview.

I am familiar with the sale of the electric light plant furnishing power and electric light to the Longview vicinity. The agreement as to the sale of those properties to the Washington Gas & Electric Company was reached in July, 1930, and was closed November 1st of the same year. That was an advantageous sale to the Long-Bell Lumber Company. They realized $3,366,000.00 in cash, which was the cost.

It was and had been the policy of the Long-Bell Lumber Company to sell facilities not directly connected with the manufacture of lumber. That was their desire. The Long-Bell Lumber Company had necessarily made a very large investment in timber in the Northwest because it wanted to provide itself with timber that would be commensurate with the size of the mills, and I might say that the mills were built to produce a quantity equal to the ten large mills that it had in the south, and because of the very heavy investment that it had in the plants and timber in the Northwest, it desired to liquidate all extraneous property as rapidly as possible.

It sold the waterworks in the town of Longview in the beginning, it sold the electric light and distribution system there at the same time it sold the power plant, and when it sold the power plant it entered into an operating contract with the purchaser by which the purchaser agreed to furnish power and steam and electricity for the woods operations and for the operation of the Longview Mills, and agreed to purchase hog fuel, the refuse of the saw mills, from the Long-Bell Lumber Company. That contract was of indeterminate length.

The Lamb and Kesterson contracts were two large sales of tracts of timber that were not adjacent to any of the

mills of the Long-Bell Lumber Company, and were located in Oregon, near Klamath Falls.

I have only a faint recollection of any tentative negotiations with reference to financing based upon those contracts. Since it has been mentioned, I recall that I heard in the office of some correspondence or suggestion that had been made about using those contracts from Kesterson and Lamb as collateral for the issue of notes of the Long-Bell Lumber Company, but I do not think that was ever brought to my attention for legal consideration. Nothing was ever done about it so far as I know.

The holding company, as distinguished from the Long-Bell Lumber Company, is listed on the New York Stock Exchange, and has been since 1924.

I participated in making the contract with the New York Stock Exchange, and it provides that the Long-Bell Lumber Corporation should file with the New York Stock Exchange and make public, quarter and annual earnings statements. Such statements were furnished the New York Stock Exchange, were delivered to some of the newspapers, and were generally made public. Copies of those quarterly statements were sent to the New York Stock Exchange in advance of the time when they were required to be furnished, and at the same time they were furnished to the local newspapers, the Kansas City Star in Kansas City, under instructions to release them as of the date on which they would be filed with the New York Stock Exchange.

In the organization of the sales company, publicity and notice of the fact was given as follows: Among the property that was transferred to the Sales Corporation was a lot of personal property, particularly the retail yard inventories, and the Bulk Sales laws of a number of States in which yards were located required that public notice be given, and such notice was given to all of the known creditors of the Long-Bell Lumber Company in advance of the transfer.

I did not handle the notice given in the trade publications or financial journals.

The anticipations of the officials of the Long-Bell Lumber Company with respect to the lumber business remaining in 1931 at least as good as in 1930, were not realized. There was a continuous decline in the price and in the volume of consumption of lumber beginning in the early part of 1930 through 1931, and it reached the lowest stage in 1932 in both volume and production since prior to the Civil War. Production of lumber in 1932 was less than

it had been in any year since 1860, and there was a corresponding falling off in prices.

It was impossible for the Long-Bell Lumber Company at the depth of the depression to regain the cost of the labor and supplies, not to speak of anything for the trees or for the use of the plants, and I think the experience of that company was comparable to that of other well-managed lumber companies. In other words, the cost of production could not be realized from the price of the timber, so that the more timber we would produce and sell, the less money we would have.

Q. Was that the situation which brought about the difficulties of the Long-Bell Lumber Company?

Mr. Gamble: Wait a minute, that is objected to.

The Court: I will sustain that objection.

Mr. Gamble: As calling for the opinion of the witness.

The Court: Sustained.

The Witness: I think it is quite probable that I saw Plaintiff's Exhibit B-3 in its preliminary form as submitted to the Long-Bell Lumber Company as I saw a number of these circulars. I read and was familiar at the time with the contents of these circulars which I passed on on behalf of the Lumber Company.

Q. I call your particular attention, Mr. Andrews, to the statement in that circular under the heading, "Longview" to the effect that: "Longview is situated at the confluence of the Columbia and Cowlitz Rivers, having a frontage of seven and one-quarter miles on the former", that is, on the Columbia River. Did that statement challenge your attention at the time you read it as being untrue or false?

Mr. Gamble: That is objected to, as being immaterial, whether it challenged his attention or not.

The Court: I will sustain the objection.

The Witness: I noted the statement in that circular. "Longview is situated at the confluence of the Columbia and Cowlitz Rivers, having a frontage of seven and one-quarter miles on the former", just as I noted the other statements in the circulars, including the one "By reason of its water transportation and because of its proximity to the timber stands of the Long-Bell and Weyerhaeuser Companies, Longview was selected as the site for vast lumber manufacturing plants of these companies". When I examined that particular circular, I regarded those two statements as being proper and accurate.

I was familiar with the phraseology. Longview was dealt with by the Longview people as being the develop-

ment there and extended all down the river front. They had engineers make plans of the development of the river front.

The amount of bank borrowings at the beginning of 1930 was not unusual in amount for a lumber company of that size. That money was borrowed for ordinary current needs of the Company.

Q. What was the position of the commercial bankers of the Long-Bell Lumber Company as compared with the position of the holders of long term bonds or long term bonds guaranteed by the Long-Bell Lumber Company; did they occupy the same position?

Mr. Gamble: That is objected to as calling for a conclusion of this witness.

The Court: I think, on that ground, I will sustain it.

Cross-Examination of Mr. Andrews by Mr. Howland.

I was never retained or employed as a lawyer by Halsey, Stuart & Company in connection with the case which is now on trial. I was never consulted in an official way by the officers of Halsey, Stuart & Company in connection with this law suit. They have talked about it from time to time, but there never was any professional relationship such that I might regard myself, at any time, as counsel for Halsey, Stuart & Company in this piece of litigation.

I think I met Mr. Norman Pritchard, Mr. Herriott's partner, on one occasion here in the City of Chicago. I don't remember the date. We had been associated with Mr. Montgomery of that firm on some business on account of which I was in the office. I think the subject of the present claim of the Equitable Life Insurance Company against Halsey, Stuart & Company was mentioned at that conference, but I did not tell Mr. Pritchard that I had been retained by Halsey, Stuart & Company as their lawyer in connection with that matter. That is not the fact.

Mr. MacNeille once said that he would like to have us represent him in the case and I told him I thought it would be better for him to get a Chicago counsel. That was the beginning and the end of it. At the time of that conference there had not been any employment of me by Halsey, Stuart & Company, because there never was. I was one of the senior partners of the firm of Baker, Botts, Andrews & Wharton. It is quite possible that I did talk to Mr. Pritchard—if that was the gentleman's name—about what I thought of the merits of the claim as I then

understood it, but the conference is very dim in my recollection. I can only say that I had been in the office of that firm on other occasions because Mr. Montgomery of that firm was in a matter in which we were of counsel representing the Long-Bell Lumber Company, and I think, but I cannot be sure of it and I may be mistaken, that it was on the occasion of a visit in connection with that matter that I met Mr. Pritchard. I never went into a conference with Mr. Pritchard respecting the claim which is now on trial as counsel for Halsey, Stuart & Company. You have called my attention to something that escapes my memory. I remember being in Mr. Pritchard's office and I remember indistinctly discussing this claim. I was not at that time and I had never been employed by Halsey, Stuart & Company as counsel for them in this matter.

Mr. Montgomery represented one of the parties in a proceeding before a Master here in which the Long-Bell Lumber Company was interested, and I appeared for them. Mr. Montgomery appeared for some other party, whose name I have now forgotten.

Mr. Cornelius Lombardi was associated with our firm for some time as an attorney. He was first the local attorney for the Long-Bell Lumber Company at Longview from about 1923 to 1926, and then he came to the Kansas City office and was there up to the time I returned to Houston. He is in Kansas City now, in the firm which took over the business that we had there.

Mr. Lombardi, during the time he was in Longview, was an associate of our firm. His compensation was paid by us and we were reimbursed by the Long-Bell Lumber Company. During the years prior to 1930 I was generally informed about the business and affairs of the Long-Bell Lumber Company, particularly during the last fifteen years that I was in Kansas City, during the latter part of which I was a director of the Long-Bell Lumber Company and all of the various subsidiaries.

I was the legal adviser of Mr. R. A. Long in connection with some of his personal matters, and had considerable to do with the creation of the corporation referred to as the Long-Bell Lumber Corporation, which was incorporated in 1924, and these other corporations, such as the Longview Company and the Longview Suburban Company. There were about five or six subsidiary corporations of the Long-Bell Lumber Company created at Longview, Washington, to deal with the various activities in which the Long-Bell Lumber Company was there engaged; there were the Longview Public Service Company, the

Longview Suburban Company, the Longview Company, the Longview Concrete Pipe Company, the Longview Stevedoring Company, and the Longview Dredging Company.

I generally supervised the organization and the corporate set-up of those, but I did not do it all myself. After 1921 I had assistants in Kansas City, in addition to the lawyers who were associated with the Houston Office.

The Long-Bell Lumber Corporation was and is a Maryland corporation, and the Longview Lumber Company was a Missouri corporation. The Long-Bell Lumber Corporation never owned more than 99%, I think, of the stock of the Long-Bell Lumber Company. 1% we did not get, which was responsible for the organization of the Long-Bell Lumber Corporation. The Long-Bell Lumber Corporation stock was listed on the New York Stock Exchange; I think it was in the fall of 1924. There were two classes of stock, A and B, with A stock listed and having certain preferences in the payment of dividends over B stock. The Long-Bell Lumber Corporation A stock paid dividends up to September, 1927, and since the payment of the quarterly dividend at that time, no more have been paid.

The officers and directors of these corporations I think were all the same.

I think the Long-Bell Lumber Company owed the banks nothing at the end of 1927. At the end of 1928, refreshing my recollection, I now say that the Lumber Company owed the banks $2,500,000.00, and at the end of 1929 I think it was $4,000,000.00. By the 30th of June, 1930, it probably was as much as $5,400,000.00, which was the highest amount owed, to my recollection.

At the beginning of 1930, the Long-Bell Lumber Company had a large amount of property, consisting of timber holdings in the Northwest, Oregon, Washington, and California, mill plants and certain properties in the south, and in addition owned something in excess of a hundred retail lumber yards. There were certain other activities, such as the Hardwood Flooring Company down in Arkansas and the Creosoting Company, and matters of that general type.

The Long-Bell Lumber Company had a surplus in the neighborhood of $50,000,000.00 on the first of January, 1930. That surplus represents the difference between the sum of the book value of its assets and the sum of its liabilities, plus its capital stock. That does not necessarily refer to a cash surplus of any kind.

This surplus was invested in all of the properties that went to make up the assets of the Lumber Company. It was the figure at which the Long-Bell Lumber Company carried its assets on its books in excess of the money which it actually owed, plus its capital stock.

It is my recollection that the audited balance sheet as of December 31, 1929, showed an addition to surplus during the year 1930 of $1,591,000.00. There had been a contribution to that figure resulting from the profit of the sale of these two tracts of timber to the Lamb Lumber Company and to the Kesterson Lumber Company. I could not tell you what the surplus would have been if we would exclude from that figure the gain that resulted from this sale of lumber.

There had been a substantial down payment in the case of each sale, but much the larger part of the purchase price was payable in installments over a period of about ten years as the timber was cut.

Q. Would it not, then, be correct to say that the surplus, the addition to surplus for the year 1929, came as the result, not of the lumbering business and the manufacturing operations, but largely from the fact that there was placed upon the books of the Lumber Company the sale of these timber tracts at figures higher than they had previously been carried on the books of the Company.

A. That would be true if you will admit as a part of the answer that there were some questions of profits, gains of profits from operations during 1929, the amount of which I am not able to state to you.

The consolidated balance sheet as of January 1, 1930, does not separate the addition to surplus into that which came from the sale of capital assets and that which came from operation. It is listed merely as excess of sales price of timber contracted for over book carrying value in the amount of $1,624,000.00.

The principal items of the indebtedness of the Long-Bell Lumber Company, as I remember, at that time was $20,000,000.00 on the First Mortgage Bonds, Series A, B and C. They also owed about $11,000,000.00 payable over a period of years to the Weyerhaeuser Timber Company, representing the unpaid portion of the contract price for the purchase of timber in the State of Washington. In 1930 they owed an issue of gold notes of $3,250,000.00, that was payable December 1, 1931, and which was secured by a pledge of an equal amount of bonds issued by the Longview, Portland & Northern Railroad Company. They owed a bank debt, speaking as of June, 1930, of

$5,400,000.00. They owed the usual amount of current liabilities, including payroll in the usual course, taxes and assessments. They showed on their books at the end of each month as a liability all that was payable, whether it was then due or not.

They had guaranteed the obligations of the Consolidated Diking Improvement District No. 1 and the Local Improvement District Bonds, but the auditors always treated those with the words after them "per contra", meaning that it was a secondary liability. In other words, the primary liability for the payment of the Consolidated Diking District Bonds and the Local Improvement District Bonds was the assessment on the properties.

I am sure that the form of those Local Improvement District Bonds of Longview was passed before us for review before they were finally issued. They bore the endorsement on the face that they were unconditionally guaranteed as to payment of principal and interest by the Long-Bell Lumber Company.

The $20,000,000.00 First Mortgage Bonds were secured by a mortgage on standing timber and other property. It required that the Lumber Company should at all times maintain, under the mortgage, standing timber of an appraised value equal to at least 100% of the bonds outstanding, and should also maintain under the mortgage at all times other properties such as saw mills and lumber manufacturing plants, also equal to not less than 100% of the amount of the bonds outstanding, so that the bonds would at all times be secured in the ratio of two to one.

The mills of the Long-Bell Lumber Company at the junction of the rivers just outside of Longview were subject to the lien of the mortgage, as was the Weed plant.

Aside from the Lamb and Kesterson tracts, practically all of the standing timber owned by the Lumber Company was subject either to the lien of the first mortgage or that of the Weyerhaeuser purchase contract.

The Longview, Portland & Northern Railroad had a mortgage held by the Lumber Company, which owned the stock of the railroad. There was a bond issue of $3,250,000.00 on this mortgage, all of which bonds were deposited with the trustee, and the notes of the Long-Bell Lumber Company were outstanding against them. We spoke of them as gold notes.

The property which was not subject to the lien of any mortgage had a book value of $30,000,000.00 in round figures. It consisted of the retail yards that I have spoken of, inventories of lumber on hand at the mills, which at

Longview probably would be $4,000,000.00 or $5,000,000.00, and at Weed another $1,000,000.00 in finished lumber and timber in the process of manufacture, also certain stocks and securities, among them stock in the Longview Fibre Company, which was independent in that Long-Bell owned a rather small fraction of the stock; it was organized and operated by independent interests. This property was carried on the books of the company at about $30,000,000.00.

From 1923 to 1930 I was frequently in Longview; in the early part of the period almost every other month. I recall being in Longview when Walter I. Sleep, Vice-President of Halsey, Stuart & Company, was there.

Q. And is it not true that—

Mr. Johnston: If the Court please, I object to this cross-examination. This is going into matters not covered in any way on the direct. I did not go into the period 1923, from that point on.

The Court: He may answer.

Mr. Johnston: I did not touch the question. We are wandering over a vastly broade territory than the direct examination. There was no subject gone into in 1923, '24, '25, and '26.

Mr. Howland: Q. Is it not true that you and Mr. Morris and Mr. Sleep participated in the negotiations by which Halsey, Stuart & Co. purchased the first block of Longview, Washington, Local Improvement District Bonds?

A. That is my recollection. I don't remember about Mr. Morris, but I know some others did, and I remember Mr. Sleep was there. I don't know, Mr. Howland, whether —my recollection is not sufficiently clear to say that it got to the point of concluding a trade, but my recollection is that it was outlined there, if not concluded, in the way that it was subsequently done.

I would not be surprised to learn that Mr. Morris and Mr. Sleep signed the contract dated at Longview, Washington, on May 7, 1925, which covered the first purchase of L. I. D. Bonds by Halsey, Stuart & Company.

I saw the operating statements of the Long-Bell Lumber Company during the latter part of 1929 and the early part of 1930. I did not see the monthly statements, Plaintiff's Exhibit B-19, B-20 and B-21, such as you have handed me. These did not come to me regularly; they may have gone to other officers; they probably did.

I knew that in the month of May, 1930, Long-Bell Lum-

ber Company had shown an approximate loss of $300,000.00.

In the latter part of April or the first part of May in 1930, when the Long-Bell executive went to New York, I think I was out on the West Coast on a trip.

I first heard about the fact that certain demands and suggestions had been made in New York by a letter to me from Mr. Demsey which was mailed to me out on the West Coast. I received that shortly after it was written and have heard since that it was sent to me both at Klamath Falls, Oregon, and Santa Monica, California.

Plaintiff's Exhibit W-13 appears to be a carbon copy of a letter addressed to me at Klamath Falls, Oregon, dated May 15, 1930, which I believe I received on the West Coast.

Mr. Howland: I will offer in evidence, then Exhibit W-13, in connection with the cross-examination of this witness at this time.

Mr. Johnston: Objected to for the same reasons I have stated to all the other Exhibits of like nature introduced at the time of the deposition of Mr. Demsey, incompetent, irrelevant and immaterial to any issue in this case.

Mr. Howland: This letter was not offered in connection with Mr. Demsey's deposition because it had not been shown it had ever come to the attention of Long-Bell officers. I am now offering it in conection with the cross-examination of this witness.

The Court: It may be admitted.

(PLAINTIFF'S EXHIBIT W-13 offered and admitted in evidence over objections of counsel for defendant.)

I did not understand from this letter it expressed the desire of both Mr. R. A. Long and Mr. Demsey that the new corporation be brought into existence and set up as quickly as possible. I understood that it was a matter that they wanted to talk to me about as soon as I got back and wanted me to be thinking about it in the meantime. I have read the sentence "Also during the return trip from New York Mr. Long assigned to you and to me the job of considering the creation of a new company as above mentioned, and bringing it into existence just as quickly as possible", but I knew the situation and I knew the writer of the letter and I laid it aside as a matter to be considered when I returned and I was to think about it in the meantime.

I do not recall when I returned to Kansas City from the West Coast, but I should say it was in June. I don't

recall making any call upon Halsey, Stuart & Company in Chicago shortly after I returned to Kansas City from the West Coast in 1930. I may have done so, but I don't recall it. I don't recall when I first saw Mr. Stuart after my return. If I was in Chicago in June, I probably saw him then, but I have no recollection. I might have met Mr. Stuart in the month of June in Chicago, and he may have given me a message to give to Mr. Long that Mr. Stuart should be kept advised as to the result of the next meeting with the Chase National Bank in New York, but I have no recollection. It did not impress itself upon my memory because at that time I had no business transactions that I recall with Halsey, Stuart & Company.

I have no recollection that Mr. Long and Mr. Nelson made a trip to Chicago about the 3rd of April, 1930, and met Mr. Shrader of Halsey, Stuart & Company. I doubtless knew about it at the time, if it occurred, but I don't have a recollection of it.

I have no recollection about the question of putting out a bond issue on the Longview Daily News to the amount of $125,000.00 or $150,000.00, or that it was considered by Mr. Long or myself. The Longview Daily News was owned by a corporation of which Mr. Long personally owned some of the stock. He may have considered bonding that or something of the kind, and he may have mentioned it to me, but I have no recollection of it now. It was not a matter that I devoted much of any attention to.

Under the Long-Bell First Mortgage, provision was made that as timber was cut the proceeds from that timber should be deposited in what was known as a sinking fund, and that would be used to pay off the outstanding bonds; that is, for each 1000 feet of timber cut there was to be paid a stipulated sum of money at the end of each quarter.

The contracts for the Lamb and Kesterson tracts provided that the purchase price for the lumber was to be paid by the Lamb and Kesterson people as the timber was cut.

I could not say that there was any similarity between the Lamb and Kesterson contracts and the Long-Bell First Mortgage. The Long-Bell mortgage provided for the timber cut a report should be made to the Central Trust Company of the amount, and that for each 1000 feet there should be paid a certain amount, either in money or in bonds of the company.

The Lamb and Kesterson purchase contract provided that as every 1000 feet of lumber was cut a certain amount of the purchase price of the timber should be paid over to the Long-Bell Lumber Company.

It was well known to Long-Bell's officers that one of the banks from which the Long-Bell Lumber Company was borrowing money in the spring of 1930 had declined to renew its line of credit. That was the Mercantile Commerce Bank of St. Louis, with which Long-Bell had had a line of credit of $500,000.00, but I don't think they had used any of it. That bank when requested to reaffirm its line of credit for 1930 had said No, or words to that effect. I was not present. That was information which was acted upon in the office, and which I accepted as true. I don't know when this incident happened, but Mr. Long and Mr. Demsey were down in New York in May to see the banks. I think a Mr. John Lonsdale was head of the institution at that time. I got into the banking situation beginning in 1930, and I didn't know much about it.

During the years 1924 and 1925, the electric generating plant located near Longview had been built by the Long-Bell Lumber Company.

When the town was laid out the Long-Bell Lumber Company, or one of its subsidiaries, constructed a system of waterworks to supply water to the inhabitants of the town. The waterworks system was sold in 1926 to the Washington Gas and Electric Company, and it was four years later before they purchased the electric light distributing system and the power house as a separate system and as a separate piece of property. I cannot remember the dates, but there were negotiations with other concerns prior to the sale to the Washington Gas & Electric Company. I think there was an investigation of the properties by Stone & Webster; I cannot be certain as to the date; it was prior to 1929, but I could not say exactly what time.

Giving you the best of my recollection, there had been negotiations during 1928 and 1929 carried on with the Trunk Line railroads looking to the purchase of the Longview, Portland & Northern Railroad, because the Long-Bell Lumber Company desired almost from the beginning to have the Trunk Line Railroads operate the railroad and do the passenger business in and out of Longview over that railroad. There had been a great deal of activity on the part of Mr. Long to get the Trunk Line railroads to route some of their trains through Longview along the west side of the Cowlitz instead of through Kelso on the east side. My best recollection is that there had been active negotiations between the Trunk Line railroad officers and the Long-Bell officers prior to 1930; I cannot be positive about it, but there had been, because as I say, it had been the desire of Long-Bell all along to sell the railroad. I don't remember specifically when the earlier negotiations were carried on.

I had never given any particular attention to Mr. Long's annual trip to New York for the purpose of seeing about bank credit prior to 1930. I never had accompanied the Long-Bell officers on these trips and did not go with them in the spring of 1930. As a matter of fact, prior to the year 1930, the renewal of those lines of credit had been accomplished by a trip shortly after the first of the year. They did not think they needed a lawyer along in 1930.

In 1930 I learned from the letter which has been identified as Exhibit W-13 that the Chase Bank had taken a definite position. It had just about that time absorbed the Equitable Trust Company, of which Mr. Place had been an officer and became an officer of the Chase Bank, which was the largest commercial bank in the United States after the merger.

Upon my return to Kansas City, the formation of this new subsidiary was an important subject, and was considered and treated as such. I got my first information about this new subsidiary in the letter about the middle of May. Then when I returned to Kansas City the subject was discussed but it was laid aside; it did not then seem a matter of importance. I next heard of it in an important way toward the last of June, when I left at the request of Mr. Demsey or Mr. Long for New York, and was in New York the first of August.

I know Mr. Henry S. Bowers, who, in the spring of 1930, was a director of the Long-Bell Lumber Company, residing in New York, and a partner in the firm of Goldman, Sachs & Company.

Mr. Howland: Q. Mr. Andrews, did you ever have any discussion with Mr. Henry Bowers with respect to the demand of the Equitable—

Mr. Johnston: That is objected to as not being competent, and not being cross-examination, going into matters not covered on the direct examination.

Mr. Howland: If the Court please, the witness testified, as I recall, that he discussed the matter with the officers and directors of the Long-Bell.

Mr. Gamble: To get the views of the officers.

Mr. Howland: To get their views.

Mr. Johnston: The officers of Longview, yes.

Mr. Howland: The Long-Bell Company.

The Court: Now, you are getting down to something else. Was Bowers an officer of the Long-Bell Company?

Mr. Johnston: No.

Mr. Howland: A director of the Long-Bell Lumber Company.

Mr. Johnston: A member of Goldman Sachs.

Mr. Howland: He is a director of the Long-Bell and also a director of the—

The Court: He may answer.

A. Why, I would say, Mr. Howland, that the probabilities are that when I was in New York in August that I talked with Mr. Bowers about it, but I have no independent recollection of doing so.

If Mr. Demsey received a letter from Mr. Bowers on this subject he very probably showed it to me. I notice there is reference to me in the last paragraph of the letter from Mr. Bowers to Mr. Demsey dated the 6th of June, 1930, identified as Exhibit W-16, and I am quite sure if Mr. Demsey received this letter he showed it to me. I have no independent recollection of that particular letter.

When I was in Kansas City I was in close touch with Mr. Long and Mr. Demsey, but I was out of Kansas City a great deal of that time in other cities. Mr. Bowers was a director of both Long-Bell Lumber Company and Chase National Bank, and it may have happened that Mr. Bowers gave his personal commitment to the Chase National Bank that if Long-Bell continued to do business with it, Long-Bell would form a new subsidiary or would enter into some other similar arrangement, but I have no recollection of it being called to my attention.

The Long-Bell Lumber Sales Corporation was incorporated under the laws of the State of Delaware, and its officers were identical with those of the Long-Bell Lumber Company.

In giving notice to the creditors of the Long-Bell Lumber Company of the creation of the sales company, we undertook to comply with the requirements of the Bulk Sales Law, because in some of the States property was being transferred which might fall within the terms of those laws. We gave notice to all the creditors of Long-Bell that we had. We could not give notice to the holders of the bonds which were guaranteed by the Long-Bell Lumber Company; they were bearer bonds and we did not know who the holders were. We gave notice to all of the registered bondholders and to the trustee of the mortgage, and to all other creditors of Long-Bell as shown upon their books.

When the Sales Corporation was brought into legal existence there was very little change in the personnel of the Long-Bell Lumber Company. Take for instance, the Manufacturing Department: Mr. Tennant was and had been for many years the Chief Operating Officer, in charge of manufacturing. He was located at Longview, and after the Sales Company was formed he continued in his position with the same duties as an employee of the Sales Company.

There was no actual change in the personnel; the Sales Corporation merely took over all of the Long-Bell employees. It was a wholly owned subsidiary, and the men did the same job on the 2nd of November that they did on the 31st of October and got the same pay for it.

I think we understood what was required to set up this subsidiary and have it function as a separate corporation, and what was required I think was done. We did much more than put up a sign "Long-Bell Lumber Sales Company" on the lumber yards. There was a transfer of title to personal property. We wanted it understood that there had been a transfer of ownership, and we so marked the stock.

We executed bills of sale and deeds, and opened bank accounts in the name of the Sales Corporation. Where the duties of the Sales Corporation were the same as the duties of the Lumber Company, the same person discharged the duties of the former. The great bulk of all the unincumbered assets of the Long-Bell Lumber Company were transferred to the Sales Corporation, and the liabilities with which the Sales Corporation started business amounted to about $7,000,000.00. They included all the accounts and debts that were then payable, including money owed to banks. They did not include obligations on timber purchase contracts, nor the bonds, nor the guarantee on the L. I. D. Bonds.

It is true that the organization of the Sales Corporation removed all of the unincumbered assets of the Long-Bell Lumber Company beyond the reach of the general creditors of that company, at least until such time as the creditors of the Long-Bell Sales Corporation were paid in full, but the Lumber Company, of course, had the stock of the Sales Corporation which carried with it the assets of the Sales Corporation after the debts of the Sales Corporation were paid. The debts of the Sales Corporation became preferred to the extent of the assets of the Sales Corporation over the claims of the obligations of the Long-Bell Lumber Company which were not assumed by the Sales Corporation. You understood me to say that the organization of the Sales Corporation and the transfers to it of these assets improved the position of the Long-Bell Lumber Company's general unsecured creditors, because that is what I said.

Mr. Howland: Q. Is the Long-Bell Lumber Sales Corporation still in existence?

A. No.

Mr. Johnston: That is objected to.

The Witness: Oh, excuse me, Mr. Johnston.

Mr. Johnston: Not competent, relevant or material to any issue.

The Court: He has answered. Let it stand.

Mr. Howland: Q. How long did it continue to do business?

Mr. Johnston: That is objected to as incompetent, irrelevant and immaterial.

The Court: What is the reason for this line of inquiry?

Mr. Howland: I think we have a right to show what became, ultimately, of the assets of the corporation. There is certain evidence given by the witness with respect, on direct examination, to the strengthening of the position of the—

The Court: All right, he may answer.

Mr. Howland: Q. (Continuing.) —financial situation?

Mr. Johnston: If the Court please, that is simply going into—pardon me. That is simply going into a question of the reorganization proceedings, which I understood from your Honor's ruling the other day you did not regard as material.

The Court: I am not going into the reorganization proceedings. You may answer this question.

A. Until November 1, 1935.

I am still general counsel for the Long-Bell Lumber Company.

Redirect Examination of Mr. Andrews by Mr. Johnston.

Q. Mr. Andrews, what was the position of the commercial banks as compared with the position of the bondholders or bonds guaranteed by the Long-Bell Lumber Company?

Mr. Gamble: Wait a minute. I think we object to that. That is a matter of law, under the facts.

The Court: I do not think I got the question. Will you read it.

(Question read.)

The Court: I will sustain the objection.

Mr. Johnston: Q. Isn't it a fact, Mr. Andrews, that the commercial banks, not only in this situation, but any other, could, at any time, on the maturity of their debt, sue the debtor and collect if assets were available?

Mr. Gamble: The same objection.

The Court: The same ruling.

The Witness: After I received the letter in May with the exception of some discussion at the office of Long-Bell Lumber Company, absolutely nothing was done regarding

the Sales Company until August, and not until that time was there any decision on the part of the Long-Bell Lumber Company whether they would or would not form such a Sales Company.

The Chase National Bank was not a creditor of the Long-Bell Lumber Company in the fall of 1930, and there were other banks in the same position as Chase National to whom the Long-Bell Lumber Company owed no money who became parties to this syndicate loan agreement. They were the Commercial National Bank and Trust Company of New York, Manufacturers Trust Company of New York, and The First National Bank of Kansas City.

This suggestion from Mr. Place of the Chase Bank was not at any time a demand. Mr. Place had been connected with the Long-Bell Lumber Company for some time through his position with the Equitable, and had an interest in the Long-Bell, and had said that he thought that in the interests of Long-Bell this arrangement should be made so as to give Long-Bell adequate security and certainty with respect to its bank debts.

We were not out of the depression then, and while we were expecting it would be short-lived, there was no certainty that it would be, and this would give the Long-Bell Lumber Company assured credit.

Recross Examination of Mr. Andrews by Mr. Howland.

My understanding was that the commercial banks with which the Long-Bell Lumber Company was doing business in the month of May, 1930, were not then showing a very sensitive, nervous and critical attitude towards the borrowings of the Long-Bell Lumber Company. Mr. Long was Chairman of the Board of the Long-Bell Lumber Company, and was the dominant figure in it right up until very shortly before his death. He built it up and was the principal owner of it and, if I may add, he was a great man.

HAROLD L. STUART, a witness on behalf of the defendant, having been previously sworn, was examined and testified as follows:

Direct Examination by Mr. Johnston.

I was sworn the other day, and testified regarding the length of time that I have been in the securities business and the experience that my house and I have had in the handling of bonds generally.

Q. Now, I will ask you, Mr. Stuart, based upon that experience, where you have a long term bond issue outstanding, whether or not the condition of a quarterly earnings of that company, showing a quarterly loss by a company that has outstanding a long term bond issue, is a matter of consideration to you as one who has put those bonds out?

Mr. Gamble: Just a minute. That is objected to as calling for incompetent evidence, and immaterial evidence. He may not have considered it when it may have been his duty to consider it. In view of certain other representations which were made on behalf of this company, that is permitting him to express an opinion which, in effect—

Mr. Johnston: No, based on his experience.

Mr. Gamble: Just a minute, Mr. Johnston. (continuing) —which in effect answers one of the factors that the jury ought to consider.

The Court: Unless you include all the other facts surrounding it, how is that a proper question?

Mr. Johnston: Well, it is a proper question to ask him, I submit to the Court, as one experienced in the handling for many years of long term bond issues, as to whether or not the current earnings of a company, or anything that materially affects long term bonds—that is what I am asking him.

The Court: Well, can you just pick out that one piece of evidence and ask him about that—

Mr. Johnston: I should think so.

The Court: (continuing) —and not go into the other facts at all?

Mr. Johnston: Well, I should think so, your Honor. I am asking him based upon his experience of years in the bond business. Here we have a question of long term bonds. Now, does the fact that earnings of the company go up and down during that period affect the status of a long term bond issue?

The Court: I will sustain the objection.

The Witness: I did not regard anything which I learned during 1930 concerning the Long-Bell Lumber Company's then current situation as changing the views which I had theretofore expressed as to the essential soundness of that company and its bonds. When I finally learned of the organization of the Long-Bell Lumber Sales Company that factor did not change my views as to the condition of the Long-Bell Lumber Company and its outstanding securities.

When I answered the question put to me by counsel for the plaintiff whether I, as a financier, regarded the Long-

Bell Lumber Company transferring practically all of its liquid assets to another corporation and agreeing that the other corporation should pledge those assets for bank loans, taking common stock in place thereof, was putting the Long-Bell Lumber Company in a more liquid position in the negative, I was thinking only of the Long-Bell Lumber Company and not the picture presented by the consolidated corporation; that is, the Long-Bell Lumber Company and its subsidiaries.

Considering the aspect of the situation from the standpoint of the Long-Bell Lumber Company and the Long-Bell Lumber Sales Corporation, I would say that the liquidity of the situation resulting from that organization and the making of the syndicate loan agreement was currently strengthened.

Cross-Examination of Mr. Stuart by Mr. Gamble.

In 1930 the Long-Bell Lumber Company owned the Long-Bell Lumber Sales Company and the Long-Bell Lumber Corporation owned the stock of the Long-Bell Lumber Company. I do not know anything about the Long-Bell Lumber Corporation. We never had anything to do with it.

Particularly since I have heard Mr. Andrews' testimony today, my reply would be that the situation was very greatly strengthened. I am basing my statement on Mr. Andrews' testimony today. This was probably my opinion in 1930, because we kept on selling the bonds and we would not have kept on selling the bonds if we thought they were weak. I did not know in 1930 all the things that I have heard Mr. Andrews testify to today.

Redirect Examination of Mr. Stuart by Mr. Johnston.

When I say that my statement is based upon Mr. Andrews' testimony, I am referring only to the last question which Mr. Johnston put to me; that is all. I am not referring to the other questions Mr. Johnston asked me; just that one.

H. R. BARTHEN, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Johnston.

My name is H. R. Barthen, and I reside in Chicago, where I am a clerk for Halsey, Stuart & Company, and have been since September, 1920. Since that time I have had charge of the department that keeps a record of all the sales made and the bonds that are for sale. I am still in charge of that department.

Both now and in 1930, upon buying securities, they are entered on a record that we keep available for the sales department. When they want to list the bonds for the sales organization, they issue a bond on hand sheet, which is made available to all the salesmen in the organization showing the bonds at their list prices. That bond on hand sheet is always prepared under my direction.

Defendant's Exhibits 19, 20 and 21 are what I have just described as bonds on hand sheets prepared from records kept on these cards, and they are sent out every week to all the salesmen of Halsey, Stuart & Company. In the interim we get out a daily bulletin showing, wherever it is necessary, changes pertaining to these listings.

I have with me the original cards showing the purchases of L. I. D. Bonds and the sales of such bonds to the Equitable Life Insurance Company of Iowa. I have prepared from those records a list showing the date of each purchase, the amount of the purchase, the bond number, the district, the price at which Halsey, Stuart & Company purchased the bond, the number of the bond held by the Equitable, the date of the sale to the Equitable, the amount of the sale, and the price. This list is accurately prepared from the original records and truthfully represents what those records show with respect to those items that I have just enumerated.

Defendant's Exhibit 36 is the list that I have so prepared. The first column at the left hand side under the heading "Date purchased", represents the date on which Halsey, Stuart & Company purchased these bonds. All of these bonds which were sold to the Equitable had been purchased by Halsey, Stuart & Company in its trading operations. The last bond of any of these original three issues of the L. I. D. Bonds were sold in either March or April, 1928, so that all of the bonds referred to in Defendant's

Exhibit 36 were bonds which Halsey, Stuart & Company had acquired in the market in its trading operations.

The second heading "Par amount" represents the par amount of the bonds bought at that particular time.

The third heading "Bond numbers" represents the numbers of those particular bonds so purchased.

The fourth "District number" represents the local improvement district by which the bonds were issued.

The next heading "Price" represents the price which Halsey, Stuart & Company paid for the bonds it bought.

The item "Bonds held to date by Equitable" represents the number of the bonds out of that purchase now held by the Equitable Life Insurance Company, and the total at the end of the column is $266,000.00.

The last item "Sales to Equitable" shows the date of the sale to the Equitable. This confirmation date comes from the card records, and the "amount" is the amount of the sale to the Equitable, and "price" is the price shown on the cards that Equitable paid for the bonds.

So that from the Exhibit 36 we can determine when the bonds were purchased, when they were sold to the Equitable, what amount was paid for them by Halsey, Stuart & Company, what amount was paid for them by the Equitable, and the amount now held by it of those bonds.

(DEFENDANT'S EXHIBIT 36 offered and admitted in evidence.)

The purchase shown on the records as the 9th of October, 1930, shows $200,000.00 total amount purchased. That was the so-called Baruch bonds purchased from Mr. Baruch. Before I made up the sales list on the 11th, we had 193 left, so that there were evidently atleast 7 sold at the time of this listing of Defendant's Exhibit 21. Before any of the bonds of District 11 were purchased by Equitable on or about the 16th or 17th of October, 1930, 21,000 of the original purchase of Baruch Bonds in the total amount of $200,000.00 had been sold, so that I believe 21,000 of those bonds had been sold before the Equitable decided to buy any of these District No. 11 Bonds. $179,000.00 was the amount of bonds which went to the Equitable out of this original purchase.

I have examined the records of Halsey, Stuart & Company on these cards to determine the total purchases made by it in the market of Longview Local Improvement District Bonds during each of the years 1929, 1930 and 1931, and likewise the total sales made to customers by Halsey, Stuart & Company in each of those three years of the L. I. D. Bonds so purchased. Defendant's Exhibit 37

is the summary of this that I have prepared from the original records. It accurately and correctly reflects the facts disclosed by them. Under "Investors" are just individual customers. "Financial Institutions" refers to banks, insurance companies and other like institutions, and "Dealers", of course, refers to dealers in bonds or securities. The heading "Call Bonds, Collection Department" represents bonds that were called while in our possession and before they had been sold, so they were just collected in due course through the Collection Department.

(DEFENDANT'S EXHIBIT 37 offered and admitted in evidence.)

I believe that Halsey, Stuart & Company were buying on the market through their trading department L. I. D. Bonds until early in 1931. I could not say exactly, but could get the exact date; I just don't remember.

Cross-Examination of Mr. Barthen by Mr. Gamble.

I really have nothing to do with the trading department of Halsey, Stuart & Company. I made none of the purchases in the market. Except as it would be reported to me, I would not know of any of the circumstances under which the purchases were made.

With the proper authority of an officer of the company, the cards are made up, as far as sales are concerned, from the original confirmations, so that the original recordation of the transaction in which Halsey, Stuart & Company either bought or sold Longview Local Improvement Bonds was the confirmation, in one instance, and the customer's statement in the other. We checked the duplicates of the customers' confirmation and the original records, as well as the cards.

A. E. BRYSON, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination by Mr. Johnston.

My name is A. E. Bryson, and I reside at Winnetka. I have charge of advertising, publicity, and sales promotion activities. I have been connected with the house since 1912 and in my present capacity since about 1914. I was acting in that capacity in 1925, and the publicity in connection with the sale of an issue of bonds known as Cow-

litz County Diking District No. 1 Bonds was either done by me or under my supervision. I handled the distribution of the publicity in connection with that matter and kept a record in what publications that issue was advertised. I have a copy of the advertisement which I used at that time to describe the issue, marked Defendant's Exhibit 38. At the time the issue was put out in 1925, this advertisement of the Cowlitz County Consolidated Diking District No. 1 was carried in the Chicago Tribune, New York Times, and San Francisco Chronicle. I also handled the L. I. D. Districts in the same way. They were likewise published at the time of their original issuance in a somewhat later list of papers—the issue which ran on June 15th was published in the New York Times, Philadelphia Ledger, Boston Herald-Traveler, Chicago Tribune, Kansas City Star-Times, Minneapolis Tribune and St. Louis Globe-Democrat. The issue of $1,483,000.00 advertised on October 21, 1925, appeared in the New York Times, Minneapolis Tribune and the St. Louis Globe-Democrat.

I have checked the financial publications in 1930 with respect to the showing in them of the quarterly earnings of the Long-Bell Lumber Company for the quarters ending March 31, June 30 and September 30 in that year.

The Analyst, issue of May 23, 1930, at page 1123, which is Defendant's Exhibit 39, shows the item of Long-Bell Lumber Company's March 31st quarter net profits for the common share earnings for that period of time. The net profits for the quarter ending March 31, 1930, carries a star before the figure $312,041.00 indicating a deficit for that quarter. There is likewise shown a similar quarter for 1929. The issue of May 30, 1930, at page 1171 of the Analyst, which is Defendant's Exhibit 40, shows the quarterly earnings for the quarter ending March 31, 1930, in exactly the same form. The issue of the Analyst for August 15, 1930, page 303, is Defendant's Exhibit 41. And for the final quarter of that year there is page 957 of the Analyst for December 5, 1930, Defendant's Exhibit 42.

(DEFENDANT'S EXHIBITS 39, 40, 41 and 42 offered and admitted in evidence, with leave given to substitute photostatic copies therefor.)

Barron's Magazine is a weekly publication of financial and commercial news circulated widely among institutions, bankers and investors. The issue of May 26, 1930, page 29, is marked Defendant's Exhibit 43. The August 18, 1930, issue of Barron's National Financial Weekly, page 29, is marked Defendant's Exhibit 44, and the issue of Barron's

for December 1, 1930, page 28, is marked Defendant's Exhibit 45.

(DEFENDANT'S EXHIBITS 43, 44 and 45 offered and admitted in evidence, with leave given to substitute photostatic copies therefor.)

(Defendant offered as EXHIBIT 46, page 415, Poor's 1930, Vol. 2, Cumulative; as EXHIBIT 47, page 301, from Poor's 1930, Vol. 3, Cumulative, and as EXHIBIT 48, page 281, from Poor's 1930, Vol. 4, Cumulative. This offer was objected to by counsel for plaintiff and the objection was sustained.)

The Chicago Journal of Commerce and La Salle Street Journal is a newspaper published daily in the City of Chicago. The issue of May 20, 1930, at page 11, refers to the first quarter earnings of the Long-Bell Lumber Company for 1930, which is marked Defendant's Exhibit 49.

(DEFENDANT'S EXHIBIT 49 offered and admitted in evidence and leave given to substitute a photostatic copy therefor.)

The issue of August 12, 1930, page 7, marked Defendant's Exhibit 50, of the Chicago Journal of Commerce and La Salle Street Journal refers to the quarterly earnings for the second quarter ended June 30, 1930, of the Long-Bell Lumber Company.

(DEFENDANT'S EXHIBIT 50 offered and admitted in evidence and leave given to substitute photostatic copy therefor.)

One of the most widely read of the leading financial journals which gives general information as to the earnings of all corporations is the Commercial and Financial Chronicle of New York, which I think is widely relied upon. It is more detailed in its information than most of the others. We have examined that magazine for the various quarterly earnings.

Mr. Johnston: I think it is also competent to show, if the Court please, that this information was given wide publicity, and, of course, perhaps this evidence itself already in sufficiently indicates that.

The Court: There is no evidence this publication was brought to their attention.

Mr. Johnston: No evidence they took the Financial and Commercial Chronicle.

The Court: Objection sustained.

Mr. Johnston: But I would like to offer in evidence the information for the three-quarters of 1930 from the Financial and Commercial Chronicle.

The Court: Mr. Gamble objects to that, and I sustained the objection.

Cross-Examination of Mr. Bryson by Mr. Gamble.

I put pencil marks on some of the pages while I was on this stand.

C. T. MacNEILLE, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Johnston.

My name is C. T. MacNeille, and I reside in Glencoe, Illinois. I have been connected with Halsey, Stuart & Company since January 4, 1908, and am now associated with them as Vice President; Secretary and Treasurer, and am also a director and a stockholder.

I think that the first time I met Mr. Hubbell was when I called on him in Des Moines, as I recall, in the early part of the summer of 1933, when I was working in connection with the plan for the reorganization of the Long-Bell Lumber Company. We discussed the Long-Bell Lumber Company, the Longview Improvement District Bonds and the Cowlitz County Diking District Bonds for several hours. In that discussion, in general outline I covered with Mr. Hubbell the entire situation as I then saw it of the Long-Bell Lumber Company and of the Diking District Bonds.

I had subsequent conferences with Mr. Hubbell in connection with this same subject matter. I remember especially one in Kansas City and one in Longview, when others were present. Then we had several other conferences when Mr. Hubbell stopped in Chicago as he was going through the city on other matters. At the meeting in Kansas City there were present Mr. Hubbell, Mr. Delander, who was chairman of the Committee representing the Diking District Bonds and an officer of the First National Bank of Minneapolis, certain officials of the Long-Bell Lumber Company, and myself.

I am not sure, but I think the conference in Kansas City lasted one or two days and the one at Longview was two or three days, while the other conferences in Chicago when Mr. Hubbell called at our office were simply a matter of an hour or less.

My recollection is that Mr. Hubbell went with me to Longview in the summer of 1934. Also present were Mr. Delander, the officials of the Long-Bell Lumber Company who were working on this matter, and myself. In the

course of those several days at Longview in 1934, Mr. Hubbell and I discussed this L. I. D. issue very thoroughly and fully. I asked Mr. Hubbell if he would serve on a committee representing the Longview Local Improvement District Bonds. He said he did not feel he had the time to act as chairman, but if one of our men in the New York Office, Mr. Keith, would act as chairman, then Mr. Hubbell would go on the committee. I returned to Chicago alone.

In the entire period of my acquaintance with Mr. Hubbell, beginning in the middle of 1933, he did not at any time in any of these conferences, at any place, say to me that Halsey, Stuart & Company had misrepresented the L. I. D. Bonds at the time they were sold to the Equitable. He did not at any time during these various sessions ever say to me that Halsey, Stuart & Company failed to furnish him or the Equitable Life Insurance Company, prior to the sale of these bonds, with all of the information that they should have. He never said to me that Halsey, Stuart & Company had failed to disclose or had concealed any fact either regarding the L. I. D. issue or the Long-Bell Lumber Company.

During all of this time our relationships with Mr. Hubbell were of a very cordial nature.

I first learned that the Equitable Life Insurance Company claimed that there had been misrepresentations made in connection with the sale of these L. I. D. Bonds to them was later in the summer, after my return from Longview in 1934. I learned that by a personal interview. A previous letter had indicated that something had come up to which Mr. Hubbell was giving consideration and he later came to Chicago and stated what it was. The letter from Mr. Hubbell addressed to me under date of August 14, 1934, beginning "Dear Clarence" is one of the letters that I received, and is marked Defendant's Exhibit 51. I never received any letter from Mr. Hubbell in which he stated anything about misrepresentations or concealments.

Pursuant to this letter of August 14, 1934, from Mr. Hubbell to me requesting an appointment on Friday, such an appointment was made and Mr. Hubbell came to Chicago accompanied by Mr. Gamble, his counsel. Present at this interview sometime after the 14th of August, 1934, were Mr. Gamble, Mr. Hubbell, Mr. H. L. Stuart and myself. At this conference nothing was said by Mr. Hubbell or by Mr. Gamble to the effect that Halsey, Stuart & Company had concealed or failed to disclose to the Equitable Life Insurance Company any facts or circumstances regarding the financial condition of the Long-Bell Lumber

Company: I never received any such information from the Equitable Life Insurance Company, or its counsel, prior to the filing of the amended complaint in this case some time in 1936. My recollection is that it was suggested that this claim which the Equitable was making be reduced to writing, as a letter. Such a letter was written, dated August 20, 1934, on the letterhead of Gamble, Read & Howland, signed by Mr. Gamble, addressed to Halsey, Stuart & Company, Att'n of Mr. Stuart. It is marked Defendant's Exhibits 52, 52A to L, inclusive, and I recognize it because my own handwriting is on the margin of each page.

Defendant's Exhibit 53 is a letter dated April 10, 1934, from Mr. Hubbell addressed to me, which I received in the ordinary course of mail.

Defendant's Exhibit 54 is a letter dated May 18, 1934, addressed to me by Mr. Hubbell and was received by me in the regular course of mail.

Cross-Examination of Mr. MacNeille by Mr. Gamble.

I went to Des Moines in the early summer of 1933, especially to see Mr. Hubbell about a plan of reorganization of the Long-Bell Lumber Company, but that did not include a reorganization of the Longview Local Improvement Districts. I was then the Reorganization Manager for the Long-Bell Lumber Company. In so far as Long-Bell was effected by reason of the guaranty of the L. I. D. Bonds, I discussed with Mr. Hubbell a readjustment of it.

I don't recall whether or not at that time there was some discussion with respect to the possibility of procuring an amendment to the Washington laws concerning the creation of local improvement districts, but during the process of the reorganization the matter was discussed. At one of these meetings I presented certain proposals for the relief of the Long-Bell Lumber Company's guaranty and a readjustment of the interest rates on the L. I. D. Bonds. I was trying to get the bondholders to relieve the Long-Bell Lumber Company of the guaranty and one of the things that was suggested was substituting the guaranty of the Longview Company. I was soliciting Mr. Hubbell to be chairman for the Bondholders Protective Committee, so that they could take care of their own interests.

The meeting between Mr. Gamble, Mr. Stuart, Mr. Hubbell and myself in August, 1934, was held in Halsey, Stuart & Company's offices in Chicago, and concerned the L. I. D. Bonds which the Equitable Life Insurance Company had

purchased from Halsey, Stuart & Company. Mr. Hubbell raised three points, as I recall: The first was the matter of the circular regarding the waterfront at Longview; the second was another statement regarding the site of the Long-Bell Lumber Company and Weyerhaeuser Mills; and the third was a letter purporting to have been written by Mr. Wood, of Halsey, Stuart & Company.

He claimed that these were misrepresentations, and we just listened and asked that it be reduced to writing so that it might be submitted to Mr. Simond who had more to do with these L. I. D. Bonds than anyone else and was then away from town. We received the letter of August 20th identified as Defendant's Exhibit 52, which I have not read since I received it. I identified it by my own handwriting put on the side at the time of its receipt. I don't recollect any further conference in our offices on this subject.

Mr. Lombardi had nothing to do with the acquisition and disposition of the Long-Bell Lumber Company first mortgage.

My interest during these conversations with Mr. Hubbell in 1933 and prior to August, 1934, was in the successful reorganization of the Lumber Company, and anything that had to do with that naturally came into my conferences.

Redirect Examination of Mr. MacNeille by Mr. Johnston.

The occasion sometime between the 14th and 20th of August when Mr. Gamble and Mr. Hubbell came to our office was the first time, so far as I know, that any of these three claims of alleged misrepresentation which I have referred to have ever been presented or made known to Halsey, Stuart & Company.

(DEFENDANT'S EXHIBIT 13 offered and admitted as to the typewritten portion only, excluding the written portion attached thereto subsequently by Mr. Windsor.)

Mr. Johnston: I now offer in evidence, if the Court please, the two wires marked Defendant's Exhibits 22 and 23.

Mr. Gamble: I desire to object to those, your Honor, as incompetent and immaterial; constituting self-serving declarations, the instruments themselves not being shown to have been brought to the attention of the Equitable Life Insurance Company of Iowa and I think, if your Honor, please—

The Court: I understand these are telegrams about which some conversation was had over the telephone?

Mr. Johnston: They were read over the telephone.

The Court: I will sustain the objection.

Mr. Johnston: If the Court please, my theory with respect to those is as follows: These two exhibits, Exhibits 22 and 23. The substance of the wire, Exhibit 23, was conveyed to Mr. Hubbell, as the testimony now discloses. There has apparently been an attempt by counsel to make the inference, at least it is clear from his cross-examination, the inference that this information was not conveyed to Mr. Hubbell.

Now, it seems to me that for that purpose as supporting the verbal testimony of the witness that this information was conveyed. The original telegram is supporting evidence and data which the Court should admit in evidence just as if a witness had testified to a conversation with X, which conversation he had reduced to a memorandum. Now, that is something that he never said to X, and yet if the question of whether or not he did make that, have that conversation with X over the telephone or in person became in controversy, for the purpose of showing the supporting evidence of the witness that such a conversation was had, that document or memorandum would be admissible.

Now, for that purpose I submit this telegram is of the same class. It was a telegram which was received for the purpose of being communicated, as it appears, from its face, to a customer. The Equitable Life, as Mr. Simond has testified, was the customer referred to, it being the custom not to put the names of customers in wires or letters.

Now, the controversy, one of the controversies is going to be whether or not that information was conveyed. The testimony of our witnesses shows that it was, just a further piece of information, was conveyed, which Mr. Hubbell requested.

Now, for that purpose, and bearing upon the weight, not for the purpose of proving the facts set forth in the telegram as, not being a document—not being a document which did not go from plaintiff to defendant, or vice-versa, but for the purpose of supporting the testimony of the witness that such a conversation was had. This telegram, together with the notation on it showing the reference by Mr. Simond of that to Mr. Holden Smith in accordance with the regular practice, the fact Mr. Holden Smith put his check mark on it showing that he had performed the job that had been turned over to him, to-wit, to transmit that information out to the Iowa office,

all of those facts, it seems to me, unless that document is admitted, become rather meaningless in the record. Therefore, for the purpose of supporting the truth of the witness' testimony, it is admissible, just as I say a memorandum would be admitted under the circumstances which I have given to the Court.

The Court: What do you say?

Mr. Gamble: These documents were maintained, perhaps, in the files of Halsey, Stuart & Co., they were not communicated to Mr. Hubbell as such, and it is not claimed that they were, and the offer of these particular written instruments is merely to bolster the testimony of the other witnesses. Now, your Honor has admitted the testimony by Mr. Smith that he telephoned to Mr. Kelley, you have admitted the testimony of Mr. Kelley, that he communicated—he could not remember personally or by telephone—the information to Mr. Hubbell, but there has never been any claim that the telegram was given to Mr. Hubbell.

The Court: I will sustain the objection.

(DEFENDANT'S EXHIBITS 25, 26, 27, 28, 33, 33A, 34, 35, 35A to H, 36, 37, 51, 53, 54, 55, 56 and 59 offered and admitted in evidence.)

Mr. Gamble: At this time, your Honor, in connection with the cross-examination of Mr. Simond, I desire to offer Plaintiff's Exhibit B-57, which I identified but omitted to offer.

Mr. Johnston: I object to that as being irrelevant, incompetent and immaterial to any issue.

The Court: It may be admitted.

(PLAINTIFF'S EXHIBIT B-57 offered and admitted in evidence over objection of counsel for defendant.)

Mr. Gamble: Then we offer in evidence Exhibits P-43 and P-44, in connection with the cross-examination of Mr. Simond.

Mr. Johnston: I object to their competency, relevancy and materiality to any issue in this case.

The Court: They may be admitted.

Mr. Johnston: Subject to my objection.

The Court: Yes, sir, subject to your objection.

(PAINTIFF'S EXHIBITS P-43 and P-44 offered and admitted in evidence over objection of counsel for defendant.)

Mr. Gamble: Now, in connection with the cross-examination of Mr. Andrews, I desire to offer in evidence Exhibits W-13 and W-16, W-13 being a letter dated May 15,

1930, written to Mr. Andrews by Mr. Demsey, vice-president of The Long-Bell Lumber Company.

Mr. Johnston: Now, on what theory can counsel offer that sort of a letter, when the Court excludes these telegrams. These telegrams had a much more direct bearing. Here is a letter between Mr. Demsey and Mr. Andrews, never brought to the attention of Halsey, Stuart & Company, never received by Halsey, Stuart & Company, obtained from Mr. Demsey on his cross-examination. I don't see any possible theory upon which that can be admitted in evidence in this case.

Mr. Gamble: The theory is simply this—

The Court: Why, I think it is quite different from your telegram. If someone had disputed with you whether or not that conversation had occurred, why, somebody that made the original notation at the time of the conversation, they could bring them in and say, "Why, I made the notation", but your telegram—you haven't any testimony in here that the telegram itself—

Mr. Johnston: Well, if the Court please—

The Court (continuing): —was ever transmitted verbatim from Smith to Kelley—

Mr. Johnston: No.

The Court (continuing): —or verbatim from Kelley to Hubbell. As far as either one of those gentlemen goes is to say that—Smith said he was not sure whether he read the substance or whether he read it verbatim.

Mr. Johnston: That's right.

The Court: Kelley wasn't sure that he got it.

Mr. Johnston: He was sure he got it.

The Court: Here, I understand, Mr. Andrews has testified that he knew of the receipt of it.

Mr. Johnston: Well, yes, but that is not binding upon Halsey, Stuart & Company. That is my point, your Honor.

The Court: No, but I understand that has to do with the question that arose at the time the banks were—

Mr. Johnston: Yes.

The Court (continuing): —attempting to withhold their credit.

Mr. Johnston: How, in other words, can a letter—how can you put in evidence a letter, as binding upon either party in the case, that is written to that witness? Why, he is not connected with Halsey, Stuart & Company in any capacity; he is connected with The Long-Bell Lumber Company, or counsel for it, and a director of it.

Now a letter written to him, I submit, your Honor, can-

not, by any possibility, be put in evidence, and be binding the contents of that letter, upon Halsey, Stuart & Company, on any theory of evidence that I am familiar with.

The Court: What is the theory under which you want it admitted?

Mr. Gamble: You will recall, if the Court please, Mr. Johnston, on direct examination of Mr. Andrews, elicited answers as to what the officers of the Long-Bell Lumber Company were doing in connection with the formation of the Long-Bell Sales Corporation, in May, 1930, and so on. He testified as to the state of mind of these officers and directors. Now, on cross-examination this letter is presented to Mr. Andrews to test his credibility.

Mr. Johnston: Well, because you used it on cross-examination does not make the letter itself admissible. So did we use these telegrams on cross-examination.

The Court: Credibility as to what?

Mr. Gamble: As to the statement that he knew what the officers of The Long-Bell Lumber Company were doing with respect to the Long-Bell Sales Corporation at that time.

The Court: It was refreshing his recollection when he testified as to what he was doing, isn't that what happened?

Mr. Gamble: Yes.

Mr. Johnston: That's all.

Mr. Gamble: This letter contradicts what he said.

The Court: In what respect?

Mr. Gamble (reading): "Also during the return trip from New York, Mr. Long assigned to you and to me the job of considering the creation of a new company as above mentioned and bring it into existence just as quickly as possible, if it is decided to go forward with such an undertaking."

Mr. Johnston: Mr. Andrews said he knew right there of that letter; he knew there was no hurry about even considering the matter, in his answer.

Mr. Gamble: "It is of course important in connection with creating such a new company that we do not bring about a condition that will be embarrassing, because of preventing a flow of funds on a loan or open account between the new company and the parent company, either way."

The Court: This is introduced on the theory of want to contradict Andrews?

Mr. Gamble: Yes.

The Court: It may be admitted in evidence.

(PLAINTIFF'S EXHIBIT W-13 offered and admitted in evidence over objection of counsel for defendant.)

Mr. Gamble: It may be agreed, then, that the lease agreement covering the space in the Equitable Building in Des Moines, Iowa, was entered into on the 12th day of February, 1931, for the period July 1, 1931, to the 30th of June, 1934.

Mr. Johnston: There is something about occupancy there.

Mr. Gamble: It is understood and agreed—

Mr. Johnston: Date of occupancy.

Mr. Gamble (Continuing): —that the monthly rental of seventeen and a half should be paid from date of occupancy and ninety dollars to be paid from July 1st, 1931.

The Court: That is the lease that covers the office of Halsey, Stuart & Company in the Equitable Building, Des Moines, Iowa?

Mr. Johnston: The date when they made the lease for the office.

D. H. WALSH, called on behalf of defendant, having been previously duly sworn, testified as follows (by deposition):

Direct Examination by Mr. Johnston.

I was here in the early days of Longview, during the period when it was developing and before it was built up. I was familiar with the literature that was sent out in circulation or published in the papers advertising the City of Longview. The circular or paper headed "Longview, Washington, the new city of the Pacific Northwest", and on the last page stating "For further information address the Longview Company, Longview, Washington," I imagine was sent out about 1925, in connection with the advertising of Longview, as I can tell from the improvements. I think it was distributed by both the Longview Company and the Association of Commerce quite generally in connection with the advertisements of the city, and has now been introduced as Plaintiff's Exhibit B-25.

What is now Plaintiff's Exhibit B-26 is a proof of a two-page advertisement in the April 2nd issue of the Saturday Evening Post, which was used by the Longview Company in advertising the city of Longview around 1925 or 1926, as I remember.

From my recollection of the original plan of the high school, it was about 1925 or 1926, but I know the advertisement was used in advertising the City of Longview.

NORMAN H. PRITCHARD, called as a witness on behalf of plaintiff, having been first duly sworn, was examined and testified, in rebuttal, as follows:

Direct Examination by Mr. Herriott.

My name is Norman H. Pritchard, and I am a member in the firm of Montgomery, Hart, Pritchard & Herriott, at 120 South LaSalle Street, Chicago.

I met Mr. Jesse Andrews once, on December 4, 1934, in my office in Chicago. Present at that time was a clerk in our office, John R. Montgomery, Jr., who was at that time not a member of the firm.

Mr. Andrews told me that he represented Halsey, Stuart & Company in the claim of the Equitable Life Insurance Company of Iowa against them, and he wanted to discuss it with me, and he did for perhaps an hour and a half. I had never met Mr. Andrews before, nor since.

Cross-Examination of Mr. Pritchard by Mr. Johnston.

I did not know at the time that you, Mr. Johnston, were representing Halsey, Stuart & Company. I did not hear from you until perhaps three weeks after that. Mr. Andrews was not in our office for the purpose of seeing Mr. Montgomery in connection with a matter pending in the Circuit Court of Cook County in which the Long-Bell Lumber Company was a party. He had been in the office theretofore several times in connection with that matter, but he was not there on that occasion to talk to Mr. Montgomery about the matter.

My firm is one of the attorneys in this case, and I was quite active in the prosecution of this in the early stages before my illness. Mr. Andrews told me on the 12th of December that he represented Halsey, Stuart & Company. I never heard from him or saw him again. I heard from you between ten days and two or three weeks after I wrote a letter. The first letter I recall writing, in which I made a claim on behalf of the Equitable Life Insurance Company, was on December 3, 1934, and I heard from you first on the telephone several days after I talked with Mr. Andrews; that was the first time I knew you were in the case.

Redirect Examination of Mr. Pritchard by Mr. Herriott.

We have records in our office showing the dates of the telephone calls referred to here and of the appointments, and I have refreshed my recollection to some extent by examining the correspondence in the files.

J. H. WINDSOR, witness on behalf of the plaintiff, having been first duly sworn, was examined and testified, in rebuttal, as follows:

Direct Examination by Mr. Gamble.

My name is J. H. Windsor, and I live in Des Moines, Iowa. I first became connected with Equitable Life Insurance Company of Iowa in January of 1931, as a clerk in the Finance Department. I am a first cousin of Fred H. Hubbell.

The first month with the Company I spent more or less in getting acquainted with the personnel; then it was my duty to learn the list of bonds owned, and, as soon as feasible, to make a personal inspection trip of various municipal issues we had in various parts of the country. The Pacific Northwest was included in the trip, and I went to look over the entire Pacific Coast holdings, which stretched from Washington to California. I think I was in Longview approximately the first week in June of 1931.

Prior to leaving Des Moines on this trip, I became acquainted with Mr. Bernard C. Kelley, probably in February of 1931, but I had not known him before that.

I stopped off in Longview because the Equitable Life Insurance Company owned some Longview Local Improvement District Bonds. I wrote a report to Mr. Hubbell from Longview with respect to the condition of the districts and the bonds in Longview. Defendant's Exhibit 4 is that report, dated June 3, 1931.

I returned to Des Moines sometime around the end of June or the first of July, having been in California about three weeks. When I returned, I discussed the report with Mr. Hubbell, and I had a good many conversations with Mr. Kelley concerning the L. I. D. Bonds then owned by the Equitable Life Insurance Company. The first one was had as soon as I returned to Des Moines, in my office. I told Mr. Kelley I thought we had some very bad bonds

in the Longview. I told him the reasons I thought they were, and went over, I believe, the reports that I had sent Mr. Hubbell, and told him I thought they should take the bonds back.

It was Mr. Kelley's custom to call at our office quite frequently. He usually dropped in to see me and, of course, in the course of the conversation we mentioned Longview Bonds on many occasions. These were in 1931, in July and part of August.

I believe I started out on another field trip in August, which took me about six weeks into the Southeast, and when I returned from that trip, which would have been along the end of September or the first of October, I believe we had some additional discussions about it.

I prepared a further memorandum or report with respect to the Longview Local Improvement District Bonds for Mr. Hubbell, which is Plaintiff's Exhibit B-56, dated November 11, 1931. Before submitting this memorandum to Mr. Hubbell I discussed it with Mr. Kelley and showed it to him.

I only recall one occasion that I was in Mr. Kelley's office in the Equitable Building in Des Moines, Iowa, and that was along about 1932, and came as the result of a conversation that we had had several times with regard to his desire to either sublease part or all of his space, and we discussed whether I knew anyone that would be interested. I think on his invitation I dropped in, and that was the only time I recall having been there. At no time did I go to the office of Mr. Kelley in the Equitable Building and tell him that he would probably be interested in knowing what the boys upstairs had been doing recently, nor did I say "they had been going over correspondence and various data that you have supplied us with covering the sales of Longview Washington Local Improvement Bonds to us, to see if they cannot find some misrepresentations that you might have made in order that we might be able to make you people repurchase the bonds". I did not go ahead to say that Mr. Kelley need have no concern about it because they had found no such misrepresentations.

I have never been to Mr. Kelley's home, nor do I believe I have ever had dinner with him. I don't recall ever having any contact with him except in connection with the relationship and representation of the Equitable Life Insurance Company which I have described.

(PLAINTIFF'S EXHIBIT B-56 offered and admitted in evidence, also identified as Defendant's Exhibit 16.)

Cross-Examination of Mr. Windsor by Mr. Johnston.

My relationship with Mr. Kelley was a very friendly one.

In this period in 1931 and 1932 to which I have just been referring, I saw Mr. Kelley in the office several times a week when I was in town. I was out of town a good deal. He usually dropped in my office after calling on Mr. Hubbell, sometimes before.

I made no statement to the effect that Mr. Kelley would be interested to know what they had been doing upstairs, etc., in my office or any place else. I had been arguing this Longview question all that summer when I was in town, and I repeatedly asked him if he could not arrange to take the bonds back. I finally told him, after I returned from my trip south, that I had seen Mr. Hubbell and told him I thought pressure should be brought on Halsey, Stuart to take them back. Mr. Hubbell had asked me to make a memo showing why I thought so. I had gone over everything, and I said to Mr. Kelley "there it is, that is what I am going to submit to Mr. Hubbell". I showed it to Mr. Kelley before I showed it to my superior officer, Mr. Hubbell. I made no changes in it after I showed it to Mr. Kelley. It is just the way it was prepared before I showed it to Mr. Kelley and just the way I delivered it to Mr. Hubbell.

I am inclined to think that I did, in my first conversation in 1931, after I returned from Longview, say to Mr. Kelley that Halsey, Stuart & Company had misrepresented facts as to the location of the mills. That position I took shortly after I returned from Longview.

Q. Was there anything else that you told him at that time that Halsey, Stuart & Company had misrepresented?

A. I told him I thought the way the circular was gotten up indicated quite a few misrepresentations, while it did not so state.

Q. What other facts did you tell Mr. Kelley Halsey, Stuart & Company misrepresented to the Equitable Life Insurance Company in the sale of these bonds? I am talking now about after you returned from Longview?

A. Yes. Well, that was the position—

* * * * * * *

Mr. Johnston: Q. I am asking you if you did. You said now that you told him that Halsey, Stuart & Company had misrepresented the location of the mills.

A. My recollection is that was the main point that I was hanging on.

My financial experience before I came to the Equitable had been in the employ of the National City Company of New York in January, 1928, to November, 1930; that was the securities affiliate of the National City Bank, which at the time I believe was the largest bank in New York City. There was quite a bit of rivalry between that and the Chase. The National City Company was engaged in underwriting and selling securities and the trading of bankers acceptances, which latter was my end of it.

I had at that time no experience in passing upon securities, but in the last six or seven months that I was with the National City I was in what was called the City Sales, which sold bonds which were being offered by the National City Company.

I am not certain whether I gave Mr. Kelley a copy of the memorandum of November 11, Plaintiff's Exhibit 56, but if I did not give him one I sat down and read the original in my office.

Redirect Examination of Mr. Windsor by Mr. Gamble.

Q. I will ask you one other question, Mr. Windsor: While you were in Longview on your trip out there in 1931, did you ascertain whether or not there were assessments on the lots and lands in the City of Longview on account of Cowlitz County Diking District Number 1?

Mr. Johnston: That is objected to.

The Court: Is that on the report they filed there? Is that mentioned on the report they filed there?

Mr. Gamble: No, sir, it is not.

The Court: He may answer.

A. No, sir, I did not.

I did not go to the courthouse in Kelso, Cowlitz County, Washington, while I was out there.

Recross Examination of Mr. Windsor by Mr. Johnston.

I did not ask anybody about this Diking District.

I had not seen the balance sheets of the Long-Bell Lumber Company before I went out, and I had looked only at the circular which the Equitable had describing the bonds.

In preparing a trip of that sort, I was new in the company, I merely got as much of the description in a hurry as I could. I did not look at the balance sheet of the Long-Bell Lumber Company prior to the time I took the trip to Longview, or at any of the other data, excepting

the circular. I don't think that I had even dug this other data out of the files. There was no occasion to expect any trouble and I had not made any investigation at all of the data we had in our offices. I had not looked at any of the municipal bond services with reference to any of these bonds.

F. W. HUBBELL, called as a witness on behalf of the plaintiff, in rebuttal, having been previously sworn, testified further as follows:

Direct Examination by Mr. Gamble.

I was on the witness stand the other day in this case.

In 1930, the Equitable Life Insurance Company of Iowa did not subscribe to Poor's Manual, and if the reporter recorded me as saying that we did not take Forbes that was an error.

When Mr. Kelley furnished me the data which I have identified here, prior to the purchasing of any of these L. I. D. Bonds, he did not furnish me the documents identified as Defendant's Exhibits 35, 35A to H, inclusive, nor did he furnish me Defendant's Exhibit 34.

At no time after the purchase of the $200,000.00 of Longview Local Improvement District No. 11 Bonds, which were confirmed on October 16, 1930, did Mr. Kelley tell me that the mills of the Long-Bell Lumber Company and the Weyerhaeuser Timber Company were outside the city limits of Longview, nor that the utilities, gas, electric and water were not owned by the city, nor that District No. 11 was coextensive with the city. I learned that District No. 11 was practically coextensive with the city sometime during the summer of 1930, before we bought No. 11 bonds from Mr. Kelley.

Cross-Examination of Mr. Hubbell by Mr. Johnston.

My recollection is very definite concerning these documents, Exhibits 34, 35A to 35H.

I made a mistake as to the time I received the Digest of Washington Laws, about which I was asked before. I said I received them in 1931; that was my recollection at that time, but I think now that there is no question that I received it before I bought any of the L. I. D. Bonds, but I think I did not receive any of these documents or see them. As far as I know, I continued to re-

ceive information from Mr. Kelley after the 16th of October, whenever I asked for it. The purchase of those particular bonds was confirmed by the Equitable at a meeting of the Finance Committee on October 17th, at which approval of the purchase was made.

Q. That Poor's Manual which you said in your answer to my question originally, that the only two services, statistical services which you could recall, were Poor's and Moody's, and you said in answer to my question: "I know that we did take Poor's list of investments by Life insurance companies", is that something different?

A. I had in mind a book which I thought was published by Poor's. I think it was called Kimber's or Kimberley's list of investments of life insurance companies, and I had that book in mind when I said we took Poor's.

Q. That was not Poor's service?

A. No, sir.

Q. And the only service, then, you took as distinguished from financial magazines was Moody's?

A. That is correct.

Q. And that was confined to municipal securities?

A. Yes, sir.

Q. Moody's Municipals?

A. Yes, sir.

Q. Did you take Forbes Magazine?

A. Yes, sir.

Q. And you took those other magazines?

A. Yes, sir.

Q. And financial papers I have indicated?

A. Yes, sir.

Q. But you did not take the Commercial and Financial Chronicle?

A. I think not, sir.

I am familiar with the Commercial and Financial Chronicle, but I don't know if we take it now. I doubt very much if we do.

Redirect Examination of Mr. Hubbell by Mr. Gamble.

Plaintiff's Exhibit B-58 is a letter dated July 20, 1933 written on the stationery of Halsey, Stuart & Company addressed to me and signed C. T. MacNeille. I received that letter and also the one marked Plaintiff's Exhibit B-59, which is dated June 4, 1934, addressed to me and to Mr. Delander; signed Halsey, Stuart & Co., Reorganization Manager," and bearing the initials C. T. M.

Plaintiff's Exhibit B-60 was received by me at or about the date of July 19, which is the date it bears, and which is written on the stationery of Halsey, Stuart & Co., addressed to me signed C. T. M., and which is accompanied by copies of letters addressed to Mr. Andrews and to Mr. Delander and a memorandum.

Mr. Gamble: We offer in evidence Exhibits B-58, B-59 and B-60.

Mr. Johnston: I have no objection to the letters, but I think these copies of tentative plans, and so forth, are not material or relevant. I don't see why they should have any bearing on anything in this case.

The Court: Is that the plan Mr. MacNeille discussed?

Mr. Gamble: Yes.

The Court: It may be admitted.

Mr. Johnston: The letters I have no objection to. I object to the other documents on the ground they are immaterial to any issue in this case.

The Court: Subject to your objection they may be admitted.

(PLAINTIFF'S EXHIBITS B-58, B-59, and B-60 offered and admitted in evidence over objection of counsel for defendant.)

BERNARD KELLEY, called as a witness on behalf of the defendant, in sur-rebuttal, having been previously sworn, was examined and testified as follows:

Direct Examination by Mr. Johnston.

I have testified in this case, and I have heard the testimony of Mr. Windsor.

I heard Mr. Windsor say that shortly after his return from Longview in the latter part of June, 1930, in talking to me about the Longview Improvement District Bonds and the purchase from Halsey, Stuart & Company, he said to me that we had misrepresented those bonds with respect to the location of the Long-Bell Lumber Company and the Weyerhaeuser Company, but he did not, either in June or July of 1930, or at any time, make such representation to me.

Mr. Windsor did not show me the memorandum Plaintiff's Exhibit 56 on or about November 11, 1931, nor let me read it. I never saw that memorandum or a copy of it, or knew of its existence until the period that this case has been on trial.

(And thereupon the following proceedings were had out of the presence and hearing of the jury.)

Mr. Johnston: Your Honor, I would like to renew my motion, if I may, at the close of all of the evidence, which I made at the close of the Plaintiff's evidence, for a directed verdict, on the ground then stated.

Does your Honor feel that it is necessary for me to re-state those grounds to your Honor?

The Court: No.

Mr. Johnston: They appear in the record, and unless your Honor feels that I should I will not re-state them, although I will be very glad to elaborate upon them, and particularly upon the question of damages, as to which I feel very honestly and frankly that there is no evidence which would justify a submission of this case to a jury, because the jury would be merely guessing, or speculating, and that there is no basis on which to find a verdict, because under the rule which seems to me, respectfully, must apply here; that is, the Iowa law, there is no basis by which this jury can possibly, on the evidence in the record, determine the difference between the value of those bonds as of May and October, 1930, and their value as they would have been if as represented. That is the point that I want to urge particularly, on my motion.

The Court: We will accept your motion and that will have to be denied.

Mr. Johnston: Your Honor can reserve ruling on it, if you desire, until a later date, until after the verdict comes in, or decide it at once.

The Court: The Judge up in Wisconsin got into trouble doing that.

Mr. Johnston: I don't think so. The rules expressly provide, as your Honor knows, you may reserve it and consider it in connection with a motion for a new trial.

The Court: I will overrule it.

United States of America
Northern District of Illinois } ss.
Eastern Division

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois,
Eastern Division.

Equitable Life Insurance Company of Iowa, a corporation, *Plaintiff,*
vs.
Halsey, Stuart & Co., a corporation, *Defendant.*
In Law. No. 44353.

ORDER.

Further evidence heard for defendant—Evidence heard for plaintiff on rebuttal. Sur-rebuttal evidence heard for defendant—defendant rests—at close of all evidence defendant moves for a directed verdict which motion is overruled—Jury to separate until April 20, 1939 at 10 A. M.

Enter:
Michael L. Igoe,
Judge.

Dated April 19, 1939.

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois,
Eastern Division.

Equitable Life Insurance Company of Iowa, *Plaintiff,*
vs.
Halsey, Stuart & Co., *Defendant.*
In Law. No. 44353.

Now comes Halsey, Stuart & Co., defendant, by Poppenhusen, Johnston, Thompson & Raymond, its attorneys, and pursuant to Rule 51 of the Rules of Civil Procedure files its request that the Court instruct the jury on the law of the above entitled case as follows:

1. The plaintiff, Equitable Life Insurance Company of Iowa, has the burden of proof in this case and it is in-

cumbent upon the plaintiff to establish its case by the preponderance or greater weight of the evidence, and if you find that the evidence is equally balanced or preponderates in favor of the defendant, then your verdict should be for the defendant.

2. The plaintiff's complaint in this case declares that certain affirmative representations were made by the defendant to the plaintiff in writing in the year 1930 in connection with the purchase by the plaintiff from the defendant of certain Longview Improvement Districts Bonds and that such representations were made by the defendant wilfully, maliciously, fraudulently and falsely, for the purpose of inducing the purchase of said bonds by the plaintiff. You are instructed that, under the law applicable to this case, in order for the plaintiff to recover on account of such representations, you must find from the evidence:

(a) That such representations were false when made;

(b) That they were known or believed by the defendant to have been false when made;

(c) That they were made by the defendant with the intent or purpose of deceiving the plaintiff;

(d) That the plaintiff relied upon such representations in the purchase of said bonds; and

(e) That, as the result of such reliance by the plaintiff, plaintiff has sustained damages.

3. One of the representations in writing claimed to have been relied upon by plaintiff in this case is the statement contained in the letter dated May 14, 1930, from the defendant's agent Wood to F. W. Hubbell (Pltff's Ex. B-24), reading as follows:

"We believe you have before you practically all of the data covering this issue of bonds, but if you have any question in mind we shall be pleased indeed to have you call Mr. Kelley or this office for anything that you may need."

You are instructed that, as a matter of law, the plaintiff did not have the right to rely upon this representation as a representation by the defendant to the plaintiff that the defendant had disclosed to the plaintiff everything that it knew about Longview Improvement Districts Bonds.

4. One of the representations in writing claimed to have been relied upon by plaintiff in this case is the statement contained in the letter of May 14, 1930, addressed by defendant's agent Wood to Hubbell (Pltff's Ex. B-24), reading as follows:

"You observe, of course, that this city has no funded debt, other than these improvement bonds, and that the

original debt has been materially reduced through retirement and maturity."

You are instructed, as a matter of law, that the plaintiff did not have the right to rely upon this representation as a representation by the defendant to the plaintiff that no bonds had been issued by any governmental or political body other than the Longview Local Improvement Districts, taxes to pay which bonds and interest thereon would be a lien or charge upon lands located in the City of Longview, Washington.

5. You are instructed that if in this case you find from the evidence that the written representations upon which the plaintiff relies were made by the defendant honestly, believing the same to be true, and without a reckless disregard as to their truth or falsity, and were not made with the intention of deceiving or misleading the plaintiff, then you are instructed that the plaintiff cannot recover on account of such representations, even though you find from the evidence that the defendant was negligent in failing to ascertain the exact facts stated in said written representations.

6. You are instructed that, if you find from the evidence that the statements contained in the printed circular (Pltff's Ex. B-1) were obtained by the defendant from The Long-Bell Lumber Company and were believed by the defendant to be true and were relied upon by the defendant in the original purchase by it of said Longview Local Improvement Districts Bonds from The Long-Bell Lumber Company and that such statements do not purport to have been made as of its own knowledge but to have been based upon information received by it from The Long-Bell Lumber Company and believed by it to be reliable, and that said statements were believed by the defendant to be true at the time of the sale of Longview Local Improvement Districts Bonds to the plaintiff, then you are instructed that the defendant cannot be held liable in this suit for such statements.

7. You are instructed that under the law applicable to this case there was no fiduciary relationship existing between the plaintiff and the defendant at the time of the sale of Longview Local Improvement Districts Bonds to the plaintiff, and the defendant was under no legal duty to voluntarily disclose everything which it knew regarding Longview Local Improvement Districts Bonds or The Long-Bell Lumber Company to the plaintiff, but its legal duty was to truthfully state all facts which it purported to state to the plaintiff and to truthfully answer all inquiries or questions received from the plaintiff.

8. The plaintiff's complaint in this case alleges that the defendant wilfully, falsely and fraudulently concealed certain material facts from the plaintiff relating to Longview Improvement Districts Bonds and The Long-Bell Lumber Company, and you are instructed that under the law applicable to this case, before the plaintiff can recover damages on account of such alleged concealments, you must find from the evidence that the defendant knowingly, and with the intention to deceive the plaintiff, failed to disclose certain material facts to the plaintiff, that thereby the plaintiff was led to believe that such facts did not exist and relied thereon in the purchase of said Longview Improvement Districts Bonds, and that, as a result thereof, the plaintiff has sustained damages.

9. You are instructed that, under the law applicable to this case, if you find from the evidence that the plaintiff is entitled to recover damages from the defendant, then the measure of the plaintiff's damages is the difference, if any, between the actual value which the $266,000. par value of Longview Improvement Districts Bonds now held by the plaintiff had at the respective dates when the same were purchased by the plaintiff from the defendant and the actual value which said bonds would have had on said dates if they had been as represented, if and to the extent that you find from the evidence said bonds were in fact misrepresented by the defendant.

10. You are instructed that the plaintiff is not entitled to recover interest in this case at any rate as part of its claim for damages.

11. You are instructed, as a matter of law, that the statement contained in the printed circular (Pltff's Ex. B-1) that

"Because of its natural advantages and proximity to the timber stands of the Long-Bell and Weyerhaeuser interests, Longview was selected as the site for the vast lumber manufacturing plants of these companies",

referring to the Long-Bell and Weyerhaeuser Companies, was not, when taken together with its context, a statement or representation by defendant that the plants of The Long-Bell Lumber Company and the Weyerhaeuser Timber Company were located within the technical city limits of the City of Longview.

12. You are instructed, as a matter of law, that the statement contained in the printed circular (Pltff's Ex. B-1) that

"It (referring to th City of Longview) has a frontage of 7¼ miles on the former (the Columbia River)"

was not, under facts and circumstances disclosed in this case, a material representation of fact.

13. You are instructed that under the law applicable to this case the plaintiff is not entitled to rely upon expressions of opinion as representations, and if you find that the statement—

"We believe you have before you practically all of the data covering this issue of bonds, but if you have any question in mind we shall be pleased indeed to have you call Mr. Kelley or this office for anything that you may need."

was an expression of opinion, then you are instructed that, as a matter of law, the plaintiff did not have the right to rely upon this representation as a representation by the defendant to the plaintiff that the defendant had disclosed to the plaintiff everything it knew about Longview Local Improvement Districts bonds.

14. Under the pleadings in this case the defendant is charged with wilfully, falsely and fraudulently defrauding plaintiff, and you are instructed that fraud is never to be presumed but must be affirmatively proved as a fact by such clear and convincing evidence as leaves the mind well satisfied that the allegations of fraud are true: You are further instructed that all men are presumed fair and honest—that their dealings are in good faith and without intention to disturb, cheat, hinder, delay or defraud others; if the conduct in question is equally capable of two constructions—one that is fair and honest and the other that is dishonest, the law presumes that the conduct is honest and fair.

15. You are instructed that under the law applicable to this case a person complaining of false representations or fraudulent concealments is not entitled to relief because of them if he might readily have ascertained the truth by ordinary care and attention, and his failure to do so was the result of his own negligence. So if you find that the means of knowledge were at hand and available to both parties, then you must find for the defendant.

16. You are instructed to find the issues in this case for the defendant, Halsey, Stuart & Co.

Respectfully submitted,

Poppenhusen, Johnston, Thompson & Raymond,

Attorneys for Halsey, Stuart & Co., Defendant.

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INSTRUCTIONS OF THE COURT.

The Court: Gentlemen of the Jury, the Court will now read the following instructions to you:

The plaintiff, the Equitable Life Insurance Company of Iowa has the burden of proof in this case, and it is incumbent upon the plaintiff to establish its case by the preponderance or greater weight of the evidence; and if you find that the evidence is evenly balanced or preponderates in favor of the defendant then your verdict should be for the defendant.

One selling securities, who undertakes to furnish information concerning the securities which he offers for sale, is required to make a reasonably full disclosure of the facts surrounding such issue and the security behind them. It is the duty of one selling securities, who attempts to supply a prospective purchaser with facts concerning the issue, not only to state truthfully what he actually tells, but also not to suppress any facts within his knowledge which will materially change or alter the effect of the facts actually stated. To tell less than the whole truth may constitute a false and fraudulent representation. A partial and fragmentary disclosure of certain facts concerning an issue of securities, accompanied by the willful concealment of material facts which change the effect of the facts actually stated, is as much a fraud as an actual positive misrepresentation. If, therefore, the defendant, Halsey, Stuart & Co., by stating certain facts, while at the same time concealing other facts relating to the same subject then within its knowledge, led plaintiff to believe that the facts surrounding the issue of Longview, Washington Local Improvement Districts Bonds were materially different than they were in fact, defendant would be guilty of false and fraudulent representations within the meaning of the law.

In order to recover damages in this action, plaintiff must establish by the preponderance or greater weight of the evidence the following:

1. That defendant misrepresented the then existing facts surrounding the issue of Longview, Washington Local Improvement District Bonds or the financial condition of Long Bell Lumber Company or failed to disclose material facts with respect to the financial condition of said Long Bell Lumber Company in some one or more of the particulars set forth in the complaint filed in this proceeding.

2. That such representations were made by the defend-

ant with the intent to deceive the plaintiff, but where the representations were known to be false at the time made such intent may be presumed.

3. That plaintiff relied upon the representations so made by defendant or some one or more of them, and by reason of such representations was induced to exchange bonds and tax warrants then owned by plaintiff for such Local Improvement Bonds and to purchase some of said bonds for cash.

4. That the representations or some of them so made by defendant were known by defendant to be false or that such representations or some of them were knowingly made by defendant as true with no reasonable grounds to believe them to be true for the purpose of inducing plaintiff to act.

5. That plaintiff has suffered damages as the direct and proximate result of such false and fraudulent representations or concealments or some of them.

If you find that plaintiff has established each of the foregoing propositions by a preponderance of the evidence, then plaintiff has established its case and is entitled to damages in some amount.

Both plaintiff and defendant are corporations and necessarily act through their officers. Any information received by an executive officer of either plaintiff or defendant is knowledge to the corporation for which such officer was acting. Certain witnesses employed by defendant have testified that they did not know the facts surrounding the issue of Longview, Washington Local Improvement Bonds. If the executive officers of defendant knew the true condition surrounding said bonds or the financial condition of the Long Bell Lumber Company, and other officers or employees of defendant made representations substantially as charged by plaintiff, then defendant would be guilty of making false and fraudulent representations. The fact, if established, that the employees actually making such representations were not aware of their falsity would not be a defense to plaintiff's claim.

You are instructed that the evidence discloses that tax foreclosure proceedings under the Washington law have been had involving a large part of the real estate subject to assessment in Longview, Washington Local Improvement Districts. A certified copy of a Tax Deed has been identified as Plaintiff's Exhibit P-47 and is before you as an Exhibit. You are instructed that under the laws of Washington the foreclosure of the lien of general state, county, municipal and school taxes and the issuance of a

Tax Deed which covers property subject to assessment in Local Improvement Districts completely wipes out and destroys the liens of all local improvement assessments then past due. The effect of the Tax Deed, a certified copy of which has been introduced, is to destroy and completely wipe out the liens of all unpaid assessments in the Local Improvement Districts at Longview, Washington, covered by such Tax Deeds.

You are instructed that plaintiff was not required to make an independent investigation of the Longview Local Improvement District Bonds offered to it by defendant and it was not required to make an independent investigation concerning the financial condition of the Long Bell Lumber Company which had guaranteed the payment of such bonds. Plaintiff was entitled to rely upon the representations of defendant with respect to said bonds and the financial condition of the guarantor of said bonds and the fact, if established, that plaintiff by independent investigation could have ascertained the true facts constitutes no defense.

You are instructed that if in this case you find from the evidence that the representations upon which the plaintiff relies were made by the defendant honestly, believing the same to be true, and without a reckless disregard as to their truth or falsity, and were not made with the intention of deceiving or misleading the plaintiff, then you are instructed that the plaintiff cannot recover on account of such representations.

You are instructed that under the law applicable to this case a person complaining of false representations or fraudulent concealments is not entitled to relief because of them if he might readily have ascertained the truth by ordinary care and attention, and his failure to do so was the result of his own negligence.

The plaintiff's complaint in this case alleges that the defendant wilfully, falsely and fraudulently concealed certain material facts from the plaintiff relating to Longview Improvement Districts Bonds and The Long-Bell Lumber Company, and you are instructed that under the law applicable to this case, before the plaintiff can recover damages on account of such alleged concealments, you must find from the evidence that the defendant knowingly, and with the intention to deceive the plaintiff, failed to disclose certain material facts to the plaintiff, and thereby the plaintiff was led to believe that such facts did not exist and relied thereon in the purchase of said Long-

view Improvement District Bonds, and that, as a result thereof, the plaintiff has sustained damages.

Under the pleadings in this case the defendant is charged with wilfully, falsely and fraudulently defrauding plaintiff, and you are instructed that fraud is never to be presumed but must be affirmatively proved as a fact by such clear and convincing evidence as leaves the mind well satisfied that the allegations of fraud are true. You are further instructed that all men are presumed fair and honest—that their dealings are in good faith and without intention to disturb, cheat, hinder, delay or defraud others; if the conduct in question is equally capable of two constructions—one that is fair and honest and the other that is dishonest, the law presumes that the conduct is honest and fair.

You are instructed that the plaintiff is not entitled to recover interest in this case at any rate as part of its claim for damages.

You are instructed that, under the law applicable to this case, if you find from the evidence that the plaintiff is entitled to recover damages from the defendant, then the measure of the plaintiff's damages is the difference, if any, between the actual value which the $266,000 par value of Longview Improvement Districts Bonds now held by the plaintiff had at the respective dates when the same were purchased by the plaintiff from the defendant and the actual value which said bonds would have had on said dates if they had been as represented, if and to the extent that you find from the evidence said bonds were in fact misrepresented by the defendant.

In determining the actual value of said bonds at the time they were acquired by the plaintiff you will take into consideration all of the facts and circumstances as shown by the evidence, including the character of the lands subject to assessment in various local improvement districts, the existence of other liens upon the lands superior to or equal to the lien of said local improvement district assessments, the local conditions then existing at Longview, Washington, so far as shown by the evidence, the true financial condition of The Long-Bell Lumber Company and its subsidiaries and all other facts and circumstances then existing as shown by the evidence.

In determining the fair actual value of said Local Improvement District Bonds at the times plaintiff acquired the bonds, you are entitled to take into consideration subsequent events and developments which were the direct and proximate result of conditions then existing.

In this connection, you are further instructed that the fact that sales of some of the Longview Local Improvement District Bonds may have been made by the defendant to others at or near the times that said bonds were acquired by the plaintiff at prices approximately the same as that paid by plaintiff does not establish the actual value of the bonds, if it appears that the defendant substantially controlled the market on such securities and fixed the prices at which the bonds were in fact bought and sold.

(The following proceedings were then had out of the hearing and presence of the Jury:)

Mr. Johnston: On behalf of the defendant, I except to instruction 3—

Mr. Block: The second instruction of the Court is number 3.

Mr. Johnston: To Instruction No. 2, beginning with "One selling securities, who undertakes to furnish information" on the ground that that instruction is erroneous in the following particulars: That there is no duty upon selling securities, who attempts to supply a prospective purchaser with facts concerning the issue, to disclose facts within his knowledge which may materially change or alter the effect of the facts actually stated; that there is no basis in this case for the giving of such an instruction; that the further portion of the instruction, "To tell less than the whole truth may constitute a false and fraudulent representation", while as an abstract proposition of law may be accurate, it is not applicable to the facts in this case, and is misleading for that reason.

The further statement, "A partial and fragmentary disclosure of certain facts concerning an issue of securities, accompanied by the willful concealment of material facts which change the effect of the facts actually stated," is likewise inapplicable to the facts in this case and not a correct statement of the law.

The further portion of the instruction, "If, therefore, the defendant, Halsey, Stuart & Co., by stating certain facts, while at the same time concealing other facts," omitting as it does the statement "wilfully concealing" is inaccurate and inapplicable to the facts here; and

That the instruction combines three or four principles of law in one instruction, and is very misleading and highly prejudicial.

Mr. Johnston: As to Instruction No. 3, I except to the first paragraph thereof, to the effect that the defendant "failed to disclose material facts with respect to the,

financial condition of The Long-Bell Lumber Company in some one or more of the particulars set forth in the complaint", on the ground that such an instruction is not properly applicable to the facts in this case, and does not constitute properly an issue to be presented to the Jury in this case; that the fourth paragraph in Instruction No. 3 adds an element which is not a proper element in an action for deceit, to wit, that if the representations made by the defendant were known to be false or some of them were knowingly made as true, with no reasonable grounds to believe them to be true—that portion of the Instruction containing the words; "with no reasonable grounds to believe them to be true,"—not being an accurate or correct statement of the law, is not applicable to the facts in this case, and misleading.

Mr. Johnston: I except to Instruction No. 4 in the following respects:

That said instruction purports to pick out or refer specifically to the evidence of certain witnesses employed by the defendant, thereby calling specific attention to the testimony of certain of the witnesses for the defendant, which is erroneous and renders the Instruction bad, misleading and improper.

I except particularly to that portion of the Instruction reading: "Certain witnesses employed by defendant have testified that they did not know the facts surrounding the issue of Longview, Washington Local Improvement Bonds."

I except to the further conclusion of that Instruction: That if the employees actually making such representations, if it were the fact, were not aware of their falsity, it would not be a defense to plaintiff's claim.

Mr. Johnston: I except to Instruction No. 5 in toto, since it presents an issue not properly going to the issue of damages in this case, selecting certain specific evidence and calling direct attention thereto, and bringing in issue the effect of the tax deed, which is not properly an element of damage under the Iowa law to be considered by the Jury in determining the damages, if any, to which the plaintiff is entitled.

The Instruction further fails to incorporate any fact with respect to the knowledge of that law by the plaintiff or by the defendant.

Mr. Johnston: I except to Instruction No. 6, on behalf of the defendant, as being in conflict with other instructions given by the Court, as purporting to state a proposition of law which is misleading in this case, in that the

plaintiff was not required to make any independent investigation, whereas if the plaintiff had available the facts it was its duty to examine the facts and if equally available to the plaintiff, to rely thereon as well as upon the representatives if any, made by the defendant.

I further except to the entire Instruction as not properly stating the rule of law if such a rule of law is applicable to the facts in the case.

Mr. Johnston: I except to the failure of the Court to give Defendant's Instruction No. 2, as submitted to the Court.

I except to the Court's refusal to give Defendant's Instruction No. 3, as submitted to the Court.

I except to the failure of the Court to give Defendant's Instruction No. 4, as requested by the defendant.

I except to the Court's modification of Defendant's Instruction No. 5 by deleting and omitting therefrom the last three lines, beginning with the words, "even though you find from the evidence that the defendant was negligent in failing to ascertain the exact facts stated in said written representations".

I except to the Court's failure to give Defendant's Instruction No. 6, as submitted by the defendant.

I except to the Court's failure to give Defendant's Instruction No. 7, as submitted by the defendant.

Mr. Johnston: I except to the modification of Defendant's Instruction No. 9 by the addition thereto of the matter relating to the right of the Jury to consider subsequent facts and circumstances in arriving at their determination of value as of 1930 when these bonds were sold, on the ground that such evidence should not be considered by the Jury and is not a proper element of damage.

I except to the further addition to that Instruction the fact that sales of Longview Local Improvement Bonds may not be considered if it appears that defendant substantially controlled the market on such securities; and I except to all other additions to said Instruction which purport to authorize the Jury to consider facts and circumstances, events and matters long subsequent to the date as of which as a matter of law such damages if any should be fixed.

Mr. Johnston: I except to the Court's failure to give Instruction No. 11 as tendered by the defendant; Instruction No. 12, as tendered by the defendant; Instruction No. 13, as tendered by the defendant; and Instruction No. 16, as tendered by the defendant—all of said instructions be-

ing for the purpose of correctly instructing the Jury upon the respective issues to which said tendered Instructions were directed.

I want to add just one or two more exceptions.

I except to Instruction No. 12 on the further ground that this Instruction, as given, leaves with the Jury the fixing of damages on a purely speculative basis.

I except to the failure of the Court to instruct as requested by the defendant with respect to the materiality of the alleged misrepresentations, in accordance with the requests, several requests made by the defendant heretofore indicated by the separate instructions, on the ground that the question of materiality, being one for the Court, it was the duty of the Court to so instruct with respect to each of those representations; and that Instruction No. 3, by way of example, does not contain the element of materiality as an essential part thereof, which it should contain if there are no instructions specifically given upon the question of materiality.

Mr. Jenner: Particularly in view of the fact that subsection 4 of the Court's Instruction No. 3 directs the Jury that if the Jury find such representations or some of them were knowingly made by the defendant—therefore the Court should have instructed the Jury which of some or all of the representations were material or were not.

(Whereupon, after the jury had retired to consider its verdict, the following further proceedings were had herein:)

(The following proceedings were had in chambers, out of the presence of the jury:)

The Court: It is understood that all the exceptions which heretofore have been taken to the instructions as originally given to the jury are understood also to be taken to the instructions now about to be given to the jury.

Mr. Block: With the further objection to the re-reading of the instructions to the jury following their retirement, —the re-reading taking place at six minutes after eight P. M.

The Court: Yes.

Mr. Howland: So far as the plaintiff is concerned, we have no objection to the re-reading of the instructions to the jury by the Court. We do wish the record to show that the grounds of objection and exception taken to the instructions at the time they were originally given to the

jury shall stand to the re-reading of the instructions at this time without further repetition.

Mr. Block: Well I understand that is already covered in the statement by the Court.

The Court: Yes, that is what I understood.

Mr. Block: Very well.

(The following proceedings were then had in the court-room in the presence of the jury:)

The Court: (To the Jury.) Gentlemen, I understand that you have requested that the instructions be read again to you.

A Juror: Yes, your Honor.

A Juror: Right.

The Court: All right.

(The Court then re-read the instructions appearing herein.)

The Court: Now you may retire.

(The jury then retired.)

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PLAINTIFF'S EXHIBITS.

PLAINTIFF'S EXHIBIT B-1.

New Issue

Exempt from all Federal Income Taxation

$785,734.60
Longview, Washington
Local Improvement Districts
6% Gold Bonds

Due on or before 12 years from date

(H. S. Co.)

Halsey, Stuart & Co.
Incorporated

Circ. 1927 G.E. 4-7-27

470

$785,734.60

Longview, Washington

Local Improvement Districts

6% Gold Bonds

$ 21,625.40	Dated July	31, 1926
10,523.54	Dated August	31, 1926
51,756.96	Dated October	1, 1926
12,425.72	Dated November	30, 1926
464,104.47	Dated January	5, 1927
225,298.51	Dated February	5, 1927

Due on or before 12 years from date

Optional at 100 in numerical order on any interest date. The law provides that benefits assessed shall be collected in ten annual installments, but any property owner may pay his entire assessment at any time with interest to the next interest date. Advance payments must be applied toward retirement of bonds by call.

Both principal and interest (annual for first year, semi-annual thereafter) payable in gold at the fiscal agency of the State of Washington in New York City. Coupon bonds in denomination of $1,000, with eight bonds in odd denomination.

Exempt from Federal Income Taxes. Eligible as investments of mutual savings bank and insurance companies organized in the State of Washington.

Legal opinion will be furnished upon request.

The payment of principal and interest on these bonds is unconditionally guaranteed by endorsement by the Long-Bell Lumber Company.

Longview

is situated about 133 miles south of Seattle at the confluence of the Columbia and Cowlitz Rivers. It has a frontage of

7¼ miles on the former, and is a port of call for ocean-going vessels midway between Portland and the Pacific Ocean. Excellent rail transportation is furnished by four railroads and the Longview docks are accessible to the largest ocean-going vessels. The Columbia, which ranks second among the rivers of the United States both in length and volume of water, is from 2,500 to 3,500 feet wide and 30 to 65 feet deep at this point, forming a turning basin in which the largest cargo ships may turn under their own power. Because of its natural advantages and proximity to the timber stands of the Long-Bell and Weyerhaeuser interests, Longview was selected as the site for the vast lumber manufacturing plants of these companies. The present output of the Long-Bell plants is 1,800,000 board feet per day. The Weyerhaeuser plants are under construction. Manufacturing plants have also been erected by other concerns, including the Longview Concrete Pipe Co., the Pacific Straw Paper & Board Company, the Magor Car Corporation, the Standard Oil Company, Longview Paint & Varnish Co. and the Central Mill Works. The first unit of the plants of the Longview Fibre Company, to cost 2½ million dollars, is now well under way. Longview, with a population of 12,000, has now more than 36 miles of concrete paved streets, 115 miles of graded and gravelled streets, 71 miles of concrete sidewalks, 56 miles of water mains, and 48 miles of storm and sanitary sewers. The city has been laid out along model lines, and has excellent schools, a motorized fire department, a thoroughly modern hospital, library, community, Y. M. C. A., and other public buildings. Two banks report combined deposits of $1,500,000 and over 4,500 depositors.

Guarantee

By agreement with the purchasers, these bonds are unconditionally guaranteed by endorsement as to principal and interest by the Long-Bell Lumber Company, approximately 99% of whose capital stock is owned by the Long-Bell Lumber Corporation, whose consolidated balance sheet reflects the following position as of December 31, 1926:

Assets	
Current	$ 17,024,262.63
Other assets	3,399,696.70
*Stumpage (Standing timber)	29,769,672.32
Land at book value	4,728,365.52
Plant, buildings and equipment	7,930,065.99
Northwestern development, at cost	37,826,587.60
Treasury stock, at cost	117,935.33
Diking District and Improvement District bonds	5,287,569.65
Deferred expenses, unamortized discount, etc.	3,168,194.80
Total Assets	$109,252,350.54
Liabilities	
Current and unfunded obligations	$ 5,360,112.66
Reserves	1,094,789.75
Bonds and other deferred indebtedness	40,209,553.25
Diking District and Improvement District bonds guaranteed, per contra	5,287,569.65
Minority shareholders' interest in subsidiary companies	602,128.31
Capital stock and surplus	56,698,196.92
Total Liabilities	$109,252,350.54

The net profits of the Long-Bell Lumber Company and subsidiaries for the year ended December 31, 1926, amounted to $2,294,496.98.

All statements herein are official or are based on information which we regard as reliable, and while we do not guarantee them, we ourselves have relied upon them in the purchase of this security.

Halsey Stuart & Co.
Incorporated

Chicago
201 S. LaSalle Street

New York
14 Wall Street

Philadelphia
111 S. 15th Street

Boston
85 Devonshire Street

Cleveland
925 Euclid Avenue

Detroit
601 Griswold Street

St. Louis
319 N. Fourth Street

Milwaukee
425 E. Water Street

Minneapolis
808 Second Avenue, S.

* Based upon independent appraisal as of December 31, 1926, the value is approximately $18,500,000 in excess of this figure.

PLAINTIFF'S EXHIBIT B-2.

Preliminary

New Issue

Longview, Washington
Local Improvement Districts
6%
Gold Bonds

Dated Sept. 25 and Oct. 15, 1925

Due on or before 12 years from date

Cir. 1832-G. E. 10-19-25
474

$1,483,000
Longview, Washington
Local Improvement Districts
6%
Gold Bonds

$704,949.77 Dated September 25, 1925 Due on or before
$778,138.92 Dated October 15, 1925 12 years from date

Optional at 100 in numerical order on any interest date. The law provides benefits assessed shall be collected in ten annual installments, but any property owner may pay his entire assessment at any time with interest to the next interest date. Advance payments must be applied toward retirement of bonds by call.

Interest for the first year will be annual and thereafter semi-annual, March 25 and September 25, and April 15, and October 15. Both principal and interest payable in gold at the fiscal agency of the State of Washington in New York City.

Coupon bonds in the denomination of $1,000 with seven bonds in odd denominations.

Exempt from the Federal Income Tax. Eligible for investments of Mutual Savings Banks and Insurance Companies organized in the State of Washington.

Legal opinion will be furnished upon request.

The payment of principal and interest on these bonds is unconditionally guaranteed by endorsement by the Long-Bell Lumber Company.

Longview

situated at the confluence of the Columbia and Cowlitz Rivers, having a frontage of 7¼ miles on the former, is a

port of call for ocean going vessels midway between Portland and the Pacific Ocean and about 90 miles south of Seattle. By reason of its water transportation and because of its proximity to the timber stands of the Long-Bell and Weyerheauser Companies, Longview has been selected as the site for the vast lumber manufacturing plants of these companies and is now a city of 7,000 population. The city is modern in every respect, having 64 miles street graded, 40 miles gravelled, 11 miles concrete paved, 22 miles concrete sidewalks, 43 miles water main, 27 miles storm and sanitary sewers, 5.37 miles lighted by ornamental street lights, a motorized fire department, a school enrollment of more than 1,100, 2 banks with combined deposits of over $1,000,000 and more than 4,000 depositors.

These local improvement districts bonds

are issued to defray the cost of paving and gravelling streets, and laying sidewalks in certain parts of the city, and they are payable from assessments levied against the benefited property.

Guarantee

by agreement with the purchasers, these bonds are unconditionally guaranteed by endorsement as to principal and interest by the Long-Bell Lumber Company, whose consolidated balance sheet reflects the following position as of December 31, 1924, as certified.

Assets

Current	$17,380,955.12
Other Assets	3,149,296.64
*Stumpage (Standing Timber)	32,031,896.19
Land at Book Value	4,699,352.02
Plant Bldgs. & Equipment	8,661,610.57
Northwestern Development at cost	28,191,275.07
Diking District Warrants	2,738,324.37
Deferred Expenses, Unamortized Bond Discount	2,308,999.18
Total Assets	$99,161,709.16

476

* Based upon independent appraisal as of July 1, 1922, the value is approximately $20,600,000 in excess of this figure.

Liabilities	
Current and Unfunded Obligations	$ 4,989,163.66
Reserves	1,138,493.93
Bonds and Other Deferred Indebtedness	35,827,220.89
Diking District Warrants per Contra	2,738,324.37
Minority Shareholders Interest in Subsidiary Companies	570,704.58
Capital Stock and Surplus	53,897,801.73
Total Liabilities	$99,161,709.16

Net profits for the year ended Dec. 31, 1924, of the Long-Bell Lumber Co., approximated $4,000,000; net for six months ended June 30, 1925, $2,600,098.40.

All statements herein are official or are based on information which we regard as reliable, and while we do not guarantee them, we ourselves have relied upon them in the purchase of this security.

PLAINTIFF'S EXHIBIT B-3.

New Issue

Exempt from all Federal Income Taxation

$908,699.57
Longview, Washington
Local Improvement District No. 11
6% Gold Bonds
(Sewer Construction)

Dated May 27, 1926

Due on or before 12 years from date

(H. S. Co.)

Halsey, Stuart & Co.
Incorporated

Cir. 1875 G. E. 6-10-26

477

$908,699.57
Longview, Washington
Local Improvement District No. 11
6% Gold Bonds
Dated May 27, 1926
Due May 27, 1938

Optional at 100 in numerical order on any interest date. The law provides that benefits assessed shall be collected in ten annual installments, but any property owner may pay his entire assessment at any time with interest to the next interest date. Advance payments must be applied toward retirement of bonds by call.

Both principal and semi-annual interest (May 27 and November 27) payable in gold at the fiscal agency of the State of Washington in New York City. Coupon bonds in denomination of $1,000, with one bond in the amount of $699.57.

Exempt from Federal Income Taxes. Eligible as investments of mutual savings banks and insurance companies organized in the State of Washington.

Legal opinion will be furnished upon request.

The payment of principal and interest on these bonds is unconditionally guaranteed by endorsement by the Long-Bell Lumber Company.

Longview.

is situated about ninety miles south of Seattle at the confluence of the Columbia and Cowlitz Rivers. It has a

frontage of 7¼ miles on the former, and is a port of call for ocean-going vessels midway between Portland and the Pacific Ocean. Excellent rail transportation is furnished by four railroads and the Longview docks are accessible to the largest ocean-going vessels. The Columbia, which ranks second among the rivers of the United States both in length and volume of water, is from 2,500 to 3,500 feet wide and 30 to 65 feet deep at this point, forming a turning basin in which the largest cargo ships may turn under their own power. Because of its natural advantages and proximity to the timber stands of the Long-Bell and Weyerhaeuser interests, Longview was selected as the site for the vast lumber manufacturing plants of these companies. Plants have also been erected by other concerns, including the Longview Concrete Pipe Co., the Pacific Straw Paper & Board Company, the Magor Car Corporation, and the Standard Oil Company. Longview, with a population of 11,000, has now more than 36 miles of paved streets, 115 miles of graded and gravelled streets, 68 miles of concrete sidewalks, 56 miles of water mains, and 30 miles of storm and sanitary sewers. The city has been laid out along model lines, and has excellent schools, a motorized fire department, a thoroughly modern hospital, and other public buildings. Two banks report combined deposits of $1,357,360.

These Bonds

are issued by Longview, Washington, Local Improvement District No. 11 in payment to the Longview Company, a subsidiary of the Long-Bell Lumber Company, for a sewer system installed by the Longview Company and acquired from it by the City of Longview.

Guarantee

By agreement with the purchasers, these bonds are unconditionally guaranteed by endorsement as to principal and interest by the Long-Bell Lumber Company, whose consolidated balnce sheet reflects the following position as of December 31, 1925:

479

Assets

Current	$ 16,257,520.60
Other assets	3,156,561.32
Stumpage (Standing timber)	30,356,129.56
Land at book value	4,732,302.13
Plant, buildings and equipment	8,136,634.41
Northwestern development, at cost	34,955,010.86
Treasury stock, at cost	100,811.69
Diking District and Improvement District bonds	4,598,422.40
Deferred expenses, unamortized discount, etc.	2,169,608.54
Total Assets	$104,463,001.51

Liabilities

Current and unfunded obligations	$ 7,537,426.53
Reserves	1,236,916.48
Bonds and other deferred indebtedness	34,251,145.33
Diking District and Improvement District bonds guaranteed, per contra	4,598,422.40
Minority shareholders' interest in subsidiary companies	594,874.84
Capital stock and surplus	56,244,215.93
Total Liabilities	$104,463,001.51

The net profits of the Long-Bell Lumber Company and subsidiaries for the year ended December 31, 1925, amounted to $4,812,178.68.

All statements herein are official or are based on information which we regard as reliable, and while we do not guarantee them, we ourselves have relied upon them in the purchase of this security.

Halsey, Stuart & Co.
Incorporated

Chicago
201 S. La Salle Street
Philadelphia
111 S. 15th Street
Cleveland
925 Euclid Avenue
St. Louis
319 N. Fourth Street

New York
14 Wall Street
Boston
85 Devonshire Street
Detroit
601 Griswold Street
Milwaukee
425 E. Water Street

Minneapolis
610 Second Avenue, S.

PLAINTIFF'S EXHIBIT B-4.

$3,250,000

The Long-Bell Lumber Company

Convertible Five-Year 6% Collateral Gold Notes

Dated December 1, 1926 Due December 1, 1931

Interest payable semi-annually June 1 and December 1 at the offices of Halsey, Stuart & Co., in Chicago and New York without deduction for Federal Income Taxes now or hereafter deductible at the source, not in excess of 2%. Notes will be in coupon form in denominations of $1,000, $500 and $100, registerable as to principal only in $1,000 denomination. They will be redeemable as a whole or in part at any time upon 45 days' published notice at the following prices and accrued interest: prior to December 1, 1927 at 102; on and after December 1, 1927 to December 1, 1928 at 101½; on and after December 1, 1928 to December 1, 1929 at 101; on and after December 1, 1929 to December 1, 1930 at 100½; and on and subsequent to December 1, 1930 at 100. The Company will reimburse the holders of these Notes, if requested within 60 days after payment, for the Pennsylvania, Connecticut and California 4-Mills and Maryland 4½ Mills Taxes, for the District of Columbia Personal Property Taxes not exceeding 5 Mills per dollar per annum, and for the Massachusetts Income Tax on the interest on these Notes not exceeding 6% of such interest per annum.

These Notes will be convertible at the option of the holder at any time until 15 days prior to maturity into the First Mortgage 6% Gold Bonds, Series A, of the Longview, Portland & Northern Railway Company (issuance authorized by the Interstate Commerce Commission) except in event of redemption the conversion privilege must be exercised at least 15 days prior to date fixed in call for redemption. The difference between the conversion price and 100, will be paid by the Company in cash to the holder at the time of conversion, accrued interest to be adjusted. For each Note converted of a denomination of $100 or multiple thereof, the holder will receive a like

principal amount in pledged Bonds at the following prices:

	Conversion Price	Approximate Yield to Maturity (July 1, 1943)
On and after December 1, 1926 to and including November 30, 1927 at	94⅝	6½%
On and after December 1, 1927 to and including November 30, 1928 at	94¾	6½%
On and after December 1, 1928 to and including November 30, 1929 at	96¼	6⅜%
On and after December 1, 1929 to and including November 30, 1930 at	96⅜	6⅜%
On and after December 1, 1930 to and including November 15, 1931 at	97⅝	6¼%

The business of The Long-Bell Lumber Company was founded in 1875 and this Company, a Missouri corporation, is believed to be the largest lumber manufacturer and distributor in the world under a single ownership. The business is a complete industrial unit, comprising the ownership of raw material which it manufactures, wholesales and retails, the forest products distributed being widely diversified. The present financing completes the Company's major financial program.

The $3,250,000 Convertible Five-Year 6% Collateral Gold Notes will be a direct obligation of the Company, and in addition will be specifically secured by pledge with the Trustee of a like principal amount of First Mortgage 6% Gold Bonds, Series A, of its subsidiary, the Longview, Portland & Northern Railway Company.

The First Mortgage Bonds, in the opinion of counsel, are secured by a first mortgage on the main line of the Railway Company and all appurtenances thereto, and, subject to certain conditional sale agreements, on all rolling stock and other equipment owned by the Railway Company. Additional Bonds not exceeding $1,750,000 in aggregate principal amount may only be issued in accordance with the terms of the Mortgage as summarized herein.

The actual cost of building and equipping the railroad was over $5,000,000. The Long-Bell Lumber Company owns the $1,250,000 outstanding capital stock of the Railway Company for which it has paid in cash at par.

Approximately 99% of the capital stock of The Long-Bell Lumber Company is owned by The Long-Bell Lumber Corporation. Appended hereto is a consolidated balance sheet of the latter Corporation and subsidiaries, dated October 31, 1926, but adjusted to give effect to the proceeds of the present financing, and appreciation of book value of stumpage to basis of independent appraisal. From this balance sheet it will be observed that net tangible assets, after deducting all liabilities except outstanding First Mortgage Bonds, and these Notes are equal to $99,971,362.86 or $3,471 per $1,000 principal amount of Bonds and Notes, and net quick assets amount to $12,763,963.05.

Net earnings during the past ten years have averaged $5,497,822.18 before interest charges and Federal taxes and were $5,526,577.55 for the twelve months ended October 31, 1926. Maximum annual interest on the secured debt in the hands of the public, including these Notes requires $2,152,143.

For detailed information regarding these Notes, attention is directed to the accompanying letter of Mr. R. A. Long, Chairman of the Board of the Company, from which the above is summarized:

The Long-Bell Lumber Company
R. A. Long Building
Kansas City, Missouri

December 17, 1926.

Halsey, Stuart & Co., Inc.,
Chicago, Illinois.

Dear Sirs:

With reference to your purchase of $3,250,000 Convertible Five-Year 6% Collateral Gold Notes of this Company, I take pleasure in submitting the following information in relation thereto:

History

The business of The Long-Bell Lumber Company was founded in 1875 and this Company, a Missouri corporation, is believed to be the largest lumber manufacturer and distributor in the world under a single ownership. The business is a complete industrial unit, comprising the ownership of raw material which it manufactures, wholesales and retails, the forest products distributed being widely diver-

sified. The present financing completes the Company's major financing program.

Consolidated Capitalization

The Long-Bell Lumber Corporation and Subsidiaries

(As at October 31, 1926 giving effect to the present financing)

	Authorized	Outstanding
Capital Stock:		
Class A Common Stock (No par value)	750,000 Shares	593,321 Shares (a)
Class B Common Stock (No par value)	550,000 Shares	542,569 Shares
(a) Listed on The New York Stock Exchange.		
Funded Debt:		
The Long-Bell Lumber Company First Mortgage 6% Gold Bonds.	$30,000,000	$25,547,100.00*
Convertible Five-Year 6% Collateral Gold Notes (this issue)	(Closed)	3,250,000
Timber, Land, Plant Purchase Obligations, Long Term Notes, etc.	(Closed)	11,501,510.08†

Purpose of Issue

The proceeds of these Notes will be used to reimburse the Company for advances heretofore made to its subsidiary, the Longview, Portland & Northern Railway Company, in connection with its acquisition of right-of-way, completion of present line, and for other capital expenditures.

Assets

Appended hereto is a consolidated Balance Sheet of The Long-Bell Lumber Corporation and subsidiaries, dated October 31, 1926 but adjusted to give effect to the proceeds of the present financing, and appreciation of book value of stumpage to basis of independent appraisal. From this Balance Sheet it will be observed that net tangible assets, after deducting all liabilities except outstanding First Mort-

* Of the $25,547,100 First Mortgage Bonds to be outstanding in the hands of the public, $9,327,100 are Series A, due July 1, 1942, $8,220,000 are Series B, due April 1, 1943, and $8,000,000 Series C, due August 1, 1946. In addition there are $611,200 Series B Treasury Bonds pledged as collateral on timber purchase indebtedness, which indebtedness is included above. First Mortgage Bonds amounting to $1,841,100 have been retired through the sinking fund.

† Partly secured by liens, collateral, etc.

gage Bonds, and these Notes are equal to $99,971,362.86 or $3,471 per $1,000 principal amount of Bonds and Notes, and net quick assets amount to $12,763,963.05.

Description of Notes

The Convertible Five-Year 6% Collateral Gold Notes will be dated December 1, 1926, will be due December 1, 1931 and will bear 6% interest payable semi-annually on June 1 and December 1 without deduction for Federal Income Taxes now or hereafter deductible at the source not in excess of 2%. Principal will be payable at the offices of Halsey, Stuart & Co., Inc., in Chicago, and interest at said Fiscal Agent's offices in Chicago and New York. Notes will be in coupon form in denominations of $1,000, $500 and $100, registerable as to principal only in $1,000 denomination. They will be redeemable as a whole or in part at any time upon 45 days' published notice at the following prices and accrued interest: prior to December 1, 1927 at 102; on and after December 1, 1927 to December 1, 1928 at 101½; on and after December 1, 1928 to December 1, 1929 at 101; on and after December 1, 1929 to December 1, 1930 at 100½; and on and subsequent to December 1, 1930 at 100. The Company will reimburse the holders of these Notes, if requested within 60 days after payment, for the Pennsylvania, Connecticut and California 4-Mills and Maryland 4½ Mills Taxes, for the District of Columbia Personal Property Taxes not exceeding 5 Mills per dollar per annum, and for the Massachusetts Income Tax on the interest on these Notes not exceeding 6% of such interest per annum.

Conversion of Notes

These Notes will be convertible at the option of the holder at any time until 15 days prior to maturity into the First Mortgage 6% Gold Bonds, Series A, of the Longview, Portland & Northern Railway Company, except in event of redemption the conversion privilege must be exercised at least 15 days prior to date fixed in call for redemption. The difference between the conversion price and 100, will be paid by the Company in cash to the holder at the time of conversion, accrued interest to be adjusted. For each Note converted of a denomination of $100 or multiple thereof, the holder will receive a like principal amount in pledged Bonds at the following prices:

	Conversion Price	Approximate Yield to Maturity (July 1, 1945)
On and after December 1, 1926 to and including November 30, 1927 at	94⅝	6½%
On and after December 1, 1927 to and including November 30, 1928 at	94¾	6½%
On and after December 1, 1928 to and including November 30, 1929 at	96¼	6⅜%
On and after December 1, 1929 to and including November 30, 1930 at	96⅜	6⅜%
On and after December 1, 1930 to and including November 15, 1931 at	97⅝	6¼%

Security

The $3,250,000 Convertible Five-Year 6% Collateral Gold Notes will be a direct obligation of the Company, and in addition will be specifically secured by pledge with the Trustee of a like principal amount of First Mortgage 6% Gold Bonds, Series A, of its subsidiary, the Longview, Portland & Northern Railway Company.

Concerning Pledged Bonds

Railway Company

The Longview, Portland & Northern Railway Company is a Washington corporation owning and operating a railroad as a common carrier. The line extends from its connection with the three transcontinental trunk lines—Northern Pacific, Union Pacific and Great Northern, through the city of Longview, to Ryderwood, Washington. It affords the only practical means of transporting the logs from the Long-Bell Lumber Company's vast timber holdings centering at Ryderwood to its mills and handling facilities at Longview. As an originating freight road the railroad enjoys on a large tonnage a favorable division of revenue with the lines mentioned. In addition to tapping one of the finest timber tracts of Douglas Fir on the North Pacific Coast, the line opens up a rich agricultural territory and affords transportation facilities for the Pacific Northwest through the well equipped port of Longview, via the Columbia River and Pacific Ocean to the ports of the world.

The actual cost of building and equipping the railroad was over $5,000,000. The Long-Bell Lumber Company owns the $1,250,000 outstanding capital stock of the Company for which it has paid in cash at par.

Earnings

Net revenue, before deducting interest charges, Federal Taxes, and depreciation, for the 12 months period ended

October 31, 1926 amounted to $372,505.90 as compared with maximum annual interest requirements on $3,250,000 Series A Bonds of $195,000.

Security of Bonds

The First Mortgage Bonds, in the opinion of counsel, are secured by a first mortgage on the main line of the Railway Company and all appurtenances thereto, and, subject to certain conditional sale agreements, on all rolling stock and other equipment owned by the Railway Company.

Description of Bonds

The First Mortgage 6% Gold Bonds, Series A, are dated July 1, 1925 and are due July 1, 1945. Interest is payable semi-annually January and July 1 without deduction for Federal Income Taxes now or hereafter deductible at the source not in excess of 2%. Principal is payable at the offices of Halsey, Stuart & Co., Inc., in Chicago, and interest at said Fiscal Agent's offices in Chicago and New York. Bonds are in coupon form in interchangeable denominations of $1,000, $500 and $100, registerable as to principal only in $1,000 denomination. They are redeemable as a whole or in part on any interest date upon 60 days' published notice at the following prices and accrued interest: on or prior to July 1, 1930 at 105; after July 1, 1930 and on or prior to July 1, 1935 at 104; after July 1, 1935 and on or prior to July 1, 1940 at 103; after July 1, 1940 and on or prior to July 1, 1944 at 102 less ½ for each full year elapsed after July 2, 1940; and subsequent to July 1, 1944 at 100. The Company has agreed to reimburse the holders of Series A Bonds, if requested within 60 days after payment, for the Pennsylvania and Connecticut 4-Mills and Maryland 4½-Mills Taxes, for the District of Columbia Personal Property Taxes not exceeding 5-Mills per dollar per annum and for the Massachusetts Income Tax on the interest on these Bonds not exceeding 6% of such interest per annum.

The issuance of $3,250,000 of these Bonds has been authorized by the Interstate Commerce Commission.

Mortgage Provisions

Additional Bonds not exceeding $1,750,000 in aggregate principal amount, of any series, having such provisions as authorized at time of issuance, may at any time be issued (a) in equal amount against the deposit of cash and to pay or refund other series issued under the Mortgage, and (b) to the extent of 75% of the cost of additions, betterments and new property, coming under the lien of the Mortgage. Additional Bonds issuable on account of expenditures made

for additions or betterments or purchased property may not be issued unless the net earnings of the Company, as defined in the Mortgage, during twelve (12) consecutive calendar months ending within sixty (60) days next preceding the date of the request of the Trustee for issuance shall have been at least twice the interest charges on all Bonds then issued and outstanding under the Mortgage and those then proposed to be issued.

The Company covenants to retire prior to maturity not less than 25% of Series A Bonds issued, through the operation of a Sinking Fund based on tonnage carried. This fund will operate, beginning with the fiscal year ending June 30, 1931, annually unless 50% of Series A Bonds at any time issued have been so retired, at which time the operation of the Sinking Fund will automatically cease. Sinking Fund payments will be applied to the purchase (by the Fiscal Agent), or if not obtainable at or below the prevailing call price, to the redemption of Series A Bonds, which will be forthwith cancelled.

Earnings

The following table shows the consolidated earnings of The Long-Bell Lumber Company and its subsidiaries for the past 10 years as certified by independent auditors.

Year Ended Dec. 31.	Depletion and Depreciation	Net Earnings after Depletion and Depreciation but before deducting Federal Taxes and Interest Charges	Total net Earnings and Realization available for payment of Federal Taxes, Interest Charges, and Debt Principal
1916	$ 2,723,172.55	$ 2,706,334.22	$ 5,429,506.77
1917	2,849,295.85	5,196,352.87	8,045,648.72
1918	3,090,608.28	4,473,888.75	7,564,497.03
1919	3,407,153.26	6,906,784.67	10,313,937.93
1920	3,634,825.72	8,805,642.42	12,440,468.14
1921	3,551,043.65	857,710.82	4,408,754.47
1922	3,652,539.08	5,661,470.04	9,314,009.12
1923	4,455,832.26	7,482,566.70	11,938,398.96
1924	4,702,605.41	6,034,367.06	10,736,972.47
1925	4,726,939.37	6,853,104.27	11,580,043.64
Total	$36,794,015.43	$54,978,221.82	$91,772,237.25
10-Yr Avge.	3,679,401.54	5,497,822.18	9,177,223.72

The maximum annual interest on the secured debt in the hands of the public, including these Notes requires $2,152,143

For the twelve months ended October 31, 1926, depletion and depreciation amounted to $4,483,993.20 and net earnings after deducting this amount but before Federal Taxes and interest charges were $5,526,577.55, a total of $10,010,510.75.

Western Development

The Company has completed its second plant in the Pacific Northwest, also located at Longview, Washington, the city which it founded. These mills will produce more than 450,000,000 feet of lumber per year. The Company's vast timber holdings tributary to its plants, make this an excellent location from a manufacturing standpoint, and distribution facilities are ideal as shipments can be made by way of three transcontinental trunk lines as well as by ocean freighters of the largest type via the Columbia River and Pacific Ocean to all ports of the World. Other substantial interests have appreciated the advantages of Longview and are locating there.

Management

The management of The Long-Bell Lumber Company remains in the hands of the men who have grown up with the Company and are responsible for its continued success.

Yours very truly,
(Signed) R. A. Long,
Chairman.

Price on Application

These Notes are offered for delivery when, as and if issued and accepted by us, and subject to approval of counsel. Definitive Notes of the Company will be ready for delivery on or about December 30, 1926. All statements herein are official or based on information which we regard as reliable, and while we do not guarantee them, we, ourselves, have relied upon them in the purchase of this security.

Chicago, December 20, 1926.

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Consolidated Balance Sheet

The Long-Bell Lumber Corporation and Subsidiaries

As at October 31, 1926, after giving effect to the application of the proceeds to be derived from sale of $3,250,000 principal amount of Convertible Five-Year 6% Collateral Gold Notes of subsidiary, The Long-Bell Lumber Company, 98.94% of whose outstanding capital stock is owned by The Long-Bell Lumber Corporation.

Assets

Plants, Buildings and Equipment		$17,180,664.00	
Less: Reserve for Depreciation		9,286,987.63	$ 7,893,676.37
Land—At Book Value			4,606,868.99
Stumpage—as independently appraised, less depletion			48,556,899.69
Northwestern Development—At Cost			
Longview, Washington, Development, including Mill Properties, Townsite and Suburban Real Estate and Improvements, Construction, Railroad, etc., exclusive of Stumpage		37,585,381.20	
Less: Reserve for Depreciation		1,312,481.64	36,272,899.56
Current:			
Cash		3,715,414.66	
Notes Receivable	$ 82,003.58		
Accounts Receivable	4,536,149.30		
	$4,618,152.88		
Less: Allowance for Doubtful Accounts, etc.	123,955.07	4,494,197.81	
Inventories		10,330,884.41	
Cash Surrender Value of Life Insurance		301,159.79	18,841,656.67
Treasury Stock—At Cost			107,381.26
Other Assets:			
Land Sales Contracts Due Serially		1,416,176.33	
Other Accounts and Notes Receivable, Securities, etc.		2,427,104.11	3,843,280.44
Diking District and Improvement District Bonds Sold, and Guaranteed—per contra			5,422,773.44
Deferred:			
Deferred Expenses, Unamortized Discount, etc.			4,614,140.40
Total Assets			$130,159,576.82

Liabilities

Bonds and Other Deferred Indebtedness:		
First Mortgage 6% Sinking Fund Gold Bonds of The Long-Bell Lumber Company	$25,547,100.00	
Convertible Five-Year 6% Collateral Gold Notes of The Long-Bell Lumber Company	3,250,000.00	
Timber, Land, Plant Purchase Obligations, Long Term Notes (partly secured by liens, collateral, etc.)	11,501,510.08	$ 40,298,610.08
Current and Unfunded Obligations:		
Notes Payable, Sundry and Individual	1,303,781.11	
Accounts Payable	2,080,330.77	
Accrued Interest and Taxes	2,693,581.74	6,077,693.62
Reserves:		
For Land and Real Estate Sales Contracts and Notes	206,532.54	
For Real Estate Improvements, Subsidiary Minority Stock and Other Purposes	2,365,564.28	2,572,096.82
Diking District and Improvement District Bonds, Sold and Guaranteed—per contra		5,422,773.44
Capital Stock and Surplus (Including appreciation of Stumpage to basis of Appraisal)		75,788,402.86
Represented by:		
593,921 shares of Class A Common no par value		
542,569 shares of Class B common no par value		
Total Liabilities		$130,159,576.82
Contingent Liabilities:		
Customers' Acceptance and Drafts discounted		$ 118,143.18

PLAINTIFF'S EXHIBIT B-5.

February 28, 1929.

Mr. M. B. Nelson, President,
The Long-Bell Lumber Company,
Kansas City, Missouri.

Dear Mr. Nelson:

I am very glad that you found an opportunity to call at our office today; not only were we pleased to see you, as always, but it gave us a long sought for opportunity to talk to some of your people in regard to Mr. Long's letter dated December 10th. His letter of that date was duly acknowledged and on December 28th I wrote Mr. Long. The figures were prepared promptly but I have held them since the 5th of January because, frankly, I really did not

know what other steps we could take to convince your Company that we were entitled to proper consideration.

I enclose herewith statement dated January 5th, which was taken from our books and there is therefore no question about its correctness. We have handled, as you see, a total of $35,866,692.05 bonds at wholesale and our retail sales have been $18,950,437.85. The gross profit for this approximately $55,000,000 of sales is $580,918.28, or a trifle over 1%.

These figures were prepared because of our feeling that Mr. Long had the idea that already we had made a substantial profit on the Long-Bell business. The figures are really surprising to me as I did not realize that we had done so badly. I knew that we had not made any money but I did not realize that we had actually lost money, which is the case because the gross profit as shown would just about one-half cover our actual cost of distribution.

As stated to you this morning, you are very welcome to show these figures to your eastern directors, Mr. Catchings and Mr. Hancock, and you are also at liberty to talk to anybody else you please whom you think can give you some light. I am more than ever convinced of the justice of our position in asking you for the amount of compensation which we have already advised you of, and of course I am very much in hopes that you will see it in the same light.

Referring again to the matter of the Sinking Fund, we believe you will have to provide cash or bonds to the extent of $250,000 Series A 1942 before July 1st and cash or bonds to the extent of $300,000 Series C 1946 on or before August 1st. We shall be very pleased to act for you in getting these bonds in and there is no question but what we can do better for you than anybody else because we know where the bonds are. I also took the liberty of suggesting to you that, if you ask us to do this you should not ask anybody else to work on these bonds, as the result could only be expensive to the Company. In the last analysis we are the market on Long-Bell securities except possibly very small amounts and you can understand how quickly we feel a movement in Long-Bell bonds when the fact that you had spoken to a Kansas City dealer about them was immediately reflected in our office here.

With kind regards, I remain

Very truly yours,

HLS-F
ENC

PLAINTIFF'S EXHIBIT B-6.

It is recognized that if the lumber industry of the Pacific Northwest is to be placed on a permanently stable and profitable basis, the desired economies effected and waste reduced, something more than the present individual and desultory attempts to regulate production, which regulation at best is only a temporary expedient to meet quickly an acute and distressing situation, must be accomplished. What is really needed is a merging of some of the largest and best properties under one ownership and control, thus establishing a company that will take the same position in the lumber industry as does the U. S. Steel corporation in the iron and steel industry, a company of sufficient size and importance to assume leadership in manufacturing and sales policies.

It is suggested that the lumber companies going into the merger retain the ownership of their timber, railroads, and logging equipment, and, as far as their lumber manufacturing plants are concerned to which this timber and these railroads, etc., are appurtenant, sell to an operating company (to be formed) their plants, ships, distributing facilities, and inventories, accepting in payment for same part cash and part stock, as hereinafter stated.

It is suggested that the proposed company issue three kinds of securities:

1. A security to be sold to the public hereinafter referred to as Primary Security.

2. A stock, $100.00 par value, to be liquidated out of the depreciation reserve, hereinafter referred to as Plant Stock. When and as this reserve is accumulated and there are funds available for the distribution of it, dividends out of it would be paid on this stock, which dividends would be credited on the par value of the stock and operate to diminish the par value of it.

3. No par value common stock. This stock to be so set up as to make it mandatory on the directors to pay a limited amount of the earnings as dividends if said earnings are available.

The Primary Security would be sold to the public to raise cash for inventories, partial payments on plants, and for working capital.

The plant Stock would be issued to the lumber companies in payment for 75% of the appraised value of their plants, ships, and distributing facilities.

The Common Stock would go to the lumber manufacturing companies whose plants, ships, and distributing facilities were acquired.

The companies entering into the merger would retain their accounts and cash. They would be paid in cash for their inventories on grade and tally on market basis.

The companies would receive 25% of the appraised value of the facilities, meaning plants, ships, and distributing facilities, in cash, and the balance, 75%, in Plant Stock.

The companies going into the merger would retain their corporate identity, but, so far as the merged properties are concerned, would in the future function only as timber holding and logging companies.

The companies included in the merger would enter into binding and irrevocable contracts to sell the operating company as logs the timber agreed upon and specified in the contract.

A price for each grade of logs at point of delivery would be fixed for each owner, the logs to be delivered to the operating company at a minimum fixed rate per year, which minimum delivery should be something less than the present rated capacity of the plants so as to allow flexibility in operating policies, with the understanding that the operating company would have the right to call for a larger delivery of logs should its trade require it. All logs to be graded, tallied and paid for under recognized standard rules. The market price of logs at the time of contract should be used as a basis for initial purchases, with the understanding that the price of logs will be advanced from time to time on some fair and equitable basis, as the price of lumber advances; or this could be provided for by allowing the Logging Companies to participate in the profits of the Operating Company on some fair basis, in the proportion the amount of logs furnished by each Company bears to the total logs cut of the Operating Company.

The value of the plant and other facilities acquired would be ascertained by appraisal. For each unit of value shown by such appraisal, there would be issued to the company transferring the plant to the Operating Company, one share of no par common stock of the company. In this way those who transfer plants to the company would each participate in the ownership of the common stock of the company (and therefore its profits) in proportion to the value of the plant. An agreement for appraisal of the plants and other facilities, would be entered into by all concerned and be to the effect that all would abide by the judgement of designated competent appraisers.

Separate committee should be appointed to work out arrangements,

(a) for organization,

(b) for appraisal of plants and facilities for issuance of Plant and Common Stock,

(c) for fixing price to be paid for each grade of logs at point of delivery, and working out an arrangement which would provide for the timber owner receiving additional compensation,

(d) for dealing with the situations where plants acquired or timber contracted for are covered by the lien of mortgages.

The merger company should be made up of companies that have in the aggregate an annual capacity of five billion feet. The following figures are an estimate, for such capacity, of the plant value, working capital and amount of financing that would be required:

Estimate plant value,	$100,000,000.00
Estimate working capital,	40,000,000.00
To provide $40,000,000 working capital and 25% of plant value or $25,000,000, paid in cash if primary security sold at 90 would require par value,	72,200,000.00

With five billion feet production, earnings per thousand to pay 7% interest and repay primary security one-twentieth annually would be as follows:

		Operating 70% per M.	Operating 100% per M.
$72,200,000 @ 7%	$5,054,000	1.45	1.01
1/20th annually	3,610,000	1.03	.72
		2.48	1.73

PLAINTIFF'S EXHIBIT B-7.

May—15th,
1930

Mr. H. L. Stuart
Halsey, Stuart & Company
201 South LaSalle Street
Chicago, Illinois

My dear Mr. Stuart:

On my return to my office after an absence of some days I find your letter of May 5th.

We will secure the information with reference to the

Kesterson and Lamm operations as soon as convenient and forward the same to you.

The total gross price we are expecting to receive for our railway property we expect to be approximately four million dollars.

I note your suggestion with reference to seeing Goldman, Sachs pertaining to the purchase of the Lamm and Kesterson contracts. After receiving your letter we mentioned the matter to them but they replied that they were now working on a different plan to what they had started out to pursue and hence such securities did not fit into their plans.

We realize, Mr. Stuart, that this proposition is rather an unusual one, but I believe those of us who are possessed of unusual ambitions like to accomplish things out of the ordinary.

Owing to what you have done in the way of financing some of our problems in the past, we have great confidence in your ability to work out some deal that will be to our interest. We need not tell you what a change it would make in our financial picture if we could make disposition of these contracts, and so we are extremely anxious that you may fall onto a plan that will appeal to both you and us.

Since the sale price for the two contracts is nearly double the sinking fund rate for the timber, it has occurred to us that in connection with taking over the contracts we might do so on a basis of disregarding what has been done with the Trustee and settle as though such sales had been in the beginning on a cash basis, which would release some money for general corporate use, rather than all going into the Sinking Fund. With a sale of the Power House and a cashing of the contracts, should the proceeds of the contracts be devoted to Sinking Fund, we are expending all of our effort in one direction.

At the present, with business conditions as they are, we also need to strengthen our current position. If this could be done to an extent by accomplishing a disposition of the timber contracts, the importance of such a transaction is emphasized. Especially so, since we find the commercial bankers in a generally critical and sensitive attitude of mind. We, therefore, have the problem before us of meeting this situation, and doing everything possible to improve it so far as our position is concerned.

Yours very sincerely,

R. A. Long,
Chairman.

RAL RWE

PLAINTIFF'S EXHIBIT B-8.

January 27, 1930.

Mr. R. A. Long, Chairman,
The Long-Bell Lumber Company,
Kansas City, Missouri.

Dear Mr. Long:

One further point in connection with the proposed plan: It seems to me that it is not altogether sound to fix a minimum price on logs and have the change take place only one way, namely, an advance. Inasmuch as the various participants would be owners of the common stock, I should think the price of logs ought to be fixed only for periods, by a committee. Whether this would be done monthly or quarterly, I do not know. The supplier of logs will participate in the profits of the corporation, if any, in accordance with his interest.

If I think of any further points, I will write you.

Very truly yours,

HLS-F

PLAINTIFF'S EXHIBIT B-9.

R. A. Long
Chairman
The Long-Bell Lumber Company
Kansas City, Mo.

Jan—28th,
1930

Mr. H. L. Stuart
Halsey, Stuart & Company
201 South La Salle Street
Chicago, Illinois

Dear Mr. Stuart:

This is to acknowledge receipt of your favor of January 27th, in which you state, among other things, as follows:

"Inasmuch as the various participants would be owners of the common stock, I should think the price of logs ought to be fixed only for periods, by a committee."

From this expression I gather that you do not properly understand the proposition we are proposing to place before the West Coast manufacturers of lumber, for if you

will read carefully the program we propose to place before them, you will find there is no Common Stock to be given to the timber owner. There is a reference to adopt some feasible plan where the timber owner will participate in the profits, but no reference is made to issue Common Stock to the timber owner.

Let me again tell you that we were all very greatly pleased with our interview with you and Mr. Shrader on Saturday.

I think you understand we are to leave for the Pacific Coast on the night of February 2nd; stopping at the Palace Hotel, San Francisco. However, should you address us before then, or at any time, you can reach us by addressing the Kansas City Office.

With best wishes, I am,

Yours very sincerely,

(Sgd) R. A. Long

R. A. Long, *Chairman.*

RAL RWE

PLAINTIFF'S EXHIBIT B-10.

January 30, 1930.

Mr. R. A. Long, Chairman,
The Long-Bell Lumber Company,
Kansas City, Missouri.

Dear Mr. Long:

I am glad to have your note of the 28th and if I am wrong, am very glad to be set right. I refer to your memorandum, Page 2, the following paragraphs:

"The Common Stock would go to the lumber manufacturing companies whose plants, ships and distributing facilities were acquired."

and

"The companies included in the merger would enter into binding and irrevocable contracts to sell the operating company as logs the timber agreed upon and specified in the contract."

Again, the last paragraph on the page would certainly seem to indicate that the new company will buy logs from some of the mill owners. If course, the new company, in its operations, might purchase logs elsewhere.

The only point I had in mind was that the fixing of a minimum price for anything is dangerous. It is like the

old five cent street car fare, which proved to be so disastrous when economic conditions changed.

Thank you for telling me of your address.

I assure you it was a pleasure to see you and Messrs. Nelson and Demsey here on Saturday and I only hope that any ideas we may have expressed will be helpful, and I wish to assure you that we are anxious to co-operate with you to the limit in this matter...

Very truly yours,

HLS-F

PLAINTIFF'S EXHIBIT B-11.

R. A. Long
Chairman
The Long-Bell Lumber Company
Kansas City, Mo.

February 1, 1930.

Mr. H. L. Stuart,
Halsey, Stuart & Company,
201 South LaSalle Street,
Chicago, Illinois.

Dear Mr. Stuart:

Further relating to the distribution of common stock, referred to in the proposed merger plan which we discussed with you, and mentioned in our recent exchange of letters, it was the intention that the wording of the plan should convey the meaning that common stock would be issued for plant and facilities only.

The new company would pay for the plant and facilities by delivering to such owners a non-interest bearing security to be liquidated from depreciation. By owning the common stock, the plant owner would be compensated if the company made any profits, for having sold his plant on a non-interest bearing basis.

For illustration, The Long-Bell Lumber Company would receive for its plant such a non-interest bearing security, and also common stock. The Long-Bell Lumber Company would, on the other hand, have a contract to sell logs to the new company, produced from the timber which it owns, but it would receive no common stock in connection with the timber contracted, it being the intention that some basis would be worked out for increasing the price of logs as the price of lumber increased.

We did not provide for common stock being distributed

to timber owners with whom the new company would have log purchase contracts, for the reason that to distribute common stock in connection with the timber contracted would make it necessary to place a valuation on the timber. Our group believes that to attempt to value the timber would make it very difficult, and probably impossible, to bring about a merger.

About the price to be paid for logs, we have never attempted to arrive at a definite conclusion concerning this factor, because it is a subject which will require considerable thought and negotiation, should a group of companies come to an understanding from which it would appear that a merger could be accomplished.

In such a situation, the program we have in mind is that a number of small committees would be delegated to deal with the many questions involved, and that there would be one committee selected from the lumbermen interested, to consider the logging contract to be entered into between timber owners and the new company. An important, or probably the important, subject with which such a committee would deal would be the base price to be paid by the new company for logs delivered to it by the timber owners, as well as the method to be adopted by which additional compensation would go to timber owners for logs, when and as the price of lumber may increase.

It may come about that the Committee dealing with the question of the contract to be entered into with timber owners, and the price to be paid for logs by the new company would arrive at a decision to establish a base price for logs, and fluctuate such base price, both ways, by some formula relating it to the market price for lumber.

I am indeed glad to have your letter, because it will be helpful in arriving at the wording and form in which our suggestion will be made in this first meeting of lumbermen, as something from which to get a start. We will have quite a bit of time for discussion enroute to California, and I will then, of course, hand your letter to Messrs. Nelson, Demsey and Andrews for their reading, that they may have the benefit of your suggestion.

Very truly yours,

(Sgd) R. A. Long

R. A. Long, *Chairman.*

500

PLAINTIFF'S EXHIBIT B-12.

June 30, 1930.

Mr. R. A. Long, Chairman,
Long-Bell Lumber Company,
Kansas City, Missouri.

Dear Mr. Long:

Please accept my thanks for your note of the 27th, received this morning. I congratulate you on the sale of the power house and, as I told you when you were here, it seems to me a most remarkable commentary on the underlying strength of your business to witness liquidation of property on such advantageous returns.

Last week Mr. Calvin Fentress of Baker, Fentress & Co. telephoned me and stated that he and his associate Mr. Graf would like to talk with me. I invited them to luncheon today, which was the first time I had open. Mr. Fentress did not say what they wished to talk about but I assumed that it was about timber conditions and I found that it was. As you know, they are exclusively dealers in timber bonds and I judge that the outlook for their business is not a very rosy one. Both of them voluntarily made the statement that commercial banks were frowning on accounts of lumber and timber companies and that the policy of all commercial banks they are familiar with had been to close out accounts of such companies. All this was a voluntary comment but it was extremely interesting to me in view of Mr. Lonsdale's attitude. Of course I said nothing whatever about your affairs other than our extreme confidence in you and your organization to work yourselves out with credit in any situation, but I thought just the same that in view of their intimate knowledge of the lumber industry and their knowledge, of the attitude of commercial banks, that perhaps your banks, except for Mr. Lonsdale's, had behaved themselves very well.

The real purpose of this meeting was to talk over the question of whether Halsey, Stuart & Co. would be willing to associate themselves with Baker, Fentress & Co. and perhaps the First Detroit Company and other responsible institutions who have handled timber bonds and attempt to be of practical assistance to a lumber man in endeavoring to work out a consolidation or some other plan which would put the lumber industry on a better basis. Both these men are, of course, very familiar with the attempts which have been made to improve conditions in the fir

industry and they are also quite familiar with the plan which you proposed last January. They seemed to think that there was more merit in your plan than in any plan which has yet been proposed.

I told them we were anxious to do anything we could within reason to be of assistance but that we would not indicate what, if anything, we might be able to do without thinking it over, and I had in mind first of all putting the matter up to you to see whether you have any objections to our talking further with Baker, Fentress & Co. I really believe that we would be slow to take the leadership along the lines suggested by Baker, Fentress & Co. because of the immense amount of time it would take of some of the principal men in our organization, because, after all, this is a problem which demands the best ability we could supply. While our interest in the timber business is considerable through yourselves and Pickering, these two companies I believe represent practically all of our interest in the business and, while important, our biggest interests, as you know, have been in other directions, principally public utilities, and these concerns demand some attention and certainly money. However, if you approve and think it would be a good idea for us to talk further with Mr. Fentress and Mr. Graf, we will do so and perhaps out of it all might come an arrangement in which we could participate and which would be of real constructive help in the thing you are trying to do. On the other hand, if you wish us to do nothing, please do not hesitate to say so and I assure you it will not be the slightest embarrassment to us, for we left the matter with Baker, Fentress & Co. in such way that we can simply give it some thought and can just as well as not say that we do not care to discuss the matter further, and they will understand it, because, as Mr. Fentress stated, he knew that our biggest interests were outside the lumber business, while his interests are almost entirely in that business.

I am sure that Mr. Andrews gave you my message, which was to ask you to kindly let me know the outcome of your next talk with the Chase Bank.

With kind regards, I remain

Very truly yours,

HLS-F

PLAINTIFF'S EXHIBIT B-13.

R. A. Long
Chairman
The Long-Bell Lumber Company
Kansas City, Mo.

July 1st
1930

Mr. H. L. Stuart,
Halsey, Stuart & Company
201 South La Salle Street
Chicago, Illinois

My dear Mr. Stuart:

This to acknowledge receipt of your favor of June 30th and to advise that we will keep you posted with reference to our negotiations with the Chase Bank, and any other matters of material importance that would be of interest to you to know.

I am glad to have the slant of Mr. Calvin Fentress and Mr. Graf of the Baker, Fentress & Company as related to the commercial banks view of lumber accounts.

With reference to the timber proposition presented by Baker, Fentress & Company, I wish to talk this over with my associates, and since two of them are very busily engaged in drawing up the contract between ourselves and the Washington Gas & Electric Company, and will be for some days, I will not be able to answer you finally on this subject for several days yet.

Yours very sincerely,
(Sgd) R. A. Long
R. A. Long,
Chairman.

RAL RWE
503

PLAINTIFF'S EXHIBIT B-14.

R. A. Long
Chairman
The Long-Bell Lumber Company
Kansas City, Mo.

June 27th,
1930

Mr. H. L. Stuart
Halsey, Stuart & Company,
201 South La Salle Street,
Chicago, Illinois

My dear Mr. Stuart:

I am pleased to advise that we had a meeting yesterday with one of the prominent executives of the Washington Gas & Electric Company in our office and reached a definite agreement with reference to the sale of our power house to them.

I think you understand this will mean the retirement of all of our bonds up to and including 1933, and about $250,000. on our 1934 bonds. And besides will bring into the treasury of our company for operating purposes about $700,000.00.

Mr. Andrews and the attorneys of the power house company will meet in the early part of next week for the completion of the contract, which, when completed becomes a firm contract but the money will not be paid us until September first.

Yours very sincerely,
(Sgd) R. A. Long
R. A. Long,
Chairman.

RAL RWE
504

PLAINTIFF'S EXHIBIT B-15.

R. A. Long
Chairman
The Long-Bell Lumber Company
Kansas City, Mo.

July 3rd, 1930.

Mr. H. L. Stuart,
Halsey, Stuart & Company
201 South La Salle Street
Chicago, Illinois.

My dear Mr. Stuart:

Referring further to your letter of June 30th: We had a conference of a few of our executives yesterday, and we are all of the opinion that we are desirous that you continue in the lead in the handling of such finances as may be necessary to complete the Merger on which we are working. We are somewhat of the opinion that should you call in Baker, Fentress & Company for active consultation at this time, it might possibly handicap you in developing a plan that your own free thinking would dictate.

However, we are agreeable to leave the matter in your hands for such disposition as is in keeping with your judgment, in which we all have such great confidence.

We assure you that we appreciate very greatly the manner in which you present this matter to us.

Yours very sincerely,
(Sgd) R. A. Long
R. A. Long,
Chairman.

RAL RWE

PLAINTIFF'S EXHIBIT B-16.

The Long-Bell Lumber Company
Home Office R. A. Long Bldg.
Kansas City, Mo.

December 11, 1925.

Halsey, Stuart & Company,
201 South LaSalle Street,
Chicago, Illinois.

Gentlemen:

About the contingent liabilities referred to in your letter of the 9th, please when submitting corrected circular, make reference to them as a foot note on the separate page on which balance sheet is printed, or as a foot note under

the caption "Capitalization" whichever may seem to you the better plan, or at some other place in the circular if you prefer. You can, I am sure, make a statement with reference to this in a brief sentence that will be adequate, and more appropriate than wording I might suggest because of my unfamiliarity with the regular practice for stating such situations.

The Long-Bell Lumber Company and its Subsidiaries own practically all of the land in consolidated diking district No. 1, Cowlitz County, Washington, and such companies therefore pay practically all of the taxes pending the sale of such land as is to be marketed. It was, therefore, decidedly beneficial to The Long-Bell Lumber Company for the diking bonds to command the best possible market price, and it was found such price was very much higher with The Long-Bell Lumber Company guaranteeing principal and interest. The par value of diking bonds guaranteed and outstanding as of September 30, 1925 was $3,260,000.00.

The same conditions within the corporate limits of the town of Longview apply also for the Local Improvement District bonds guaranteed as to principal and interest by The Long-Bell Lumber Company. The amount of such bonds guaranteed and outstanding as of September 30th was:

Long-Bell
Trade Mark

H.S.&Co. —2— 12-11-25

District No. 1	$426,815.81
District No. 2	220,133.96
Total	$646,949.77

Since September 30th, additional Longview Local Improvement bonds have been guaranteed by The Long-Bell Lumber Company as below shown, but I assume you probably will not mention these with respect to a showing as of September 30th:

District No. 2	$ 15,000.00
District No. 3	88,740.12
District No. 4	239,534.26
District No. 5	210,679.44
District No. 6	108,315.02
Total	$662,268.84

The Long-Bell Lumber Company also is to guarantee bonds of Districts 7, 8, 9 and 10, which are to be executed and delivered to Halsey, Stuart & Company during this month and next.

Very truly yours,
(Sgd) R. T. Demsey
Vice President.

RTD G

PLAINTIFF'S EXHIBIT B-17.

The Long-Bell Lumber Corporation
(Incorporated under the laws of Maryland)
Long-Bell
Trade Mark
Executive Office R. A. Long Bldg.
Kansas City, Mo.

November 26, 1927.

Confidential
Mr. F. K. Shrader,
Halsey, Stuart & Company,
201 South LaSalle Street,
Chicago, Illinois.

My dear Mr. Shrader:

Our chief executives have decided to pass the dividend for the fourth quarter and in connection therewith to make a public statement as per copy attached.

It should be released not later than Wednesday of next week and so we would be pleased to have you and Mr. Stuart go over it so that on Tuesday you can tell Messrs. Nelson, Demsey and Andrews what you think of the advisability of some such an announcement and what you think of it as prepared.

What we are seeking is a general agreement about the form the announcement shall take. Upon the return of Messrs. Nelson, Demsey and Andrews Wednesday morning, we will have a further discussion of the subject, with the expectation of telegraphing you on Wednesday to release it there, either in its present form or changed as later may be decided. We desire that you give out the same announcement in Chicago as we do here, and we hope you can have it published in full as that is what we will arrange with the Kansas City papers.

With kind regards, I am,

Very truly yours,
(Sgd) R. A. Long
R. A. Long,
Chairman.

Long-Bell Passes Dividend

At the meeting of the Executive Committee of The Long-Bell Lumber Corporation today, the dividend on its A stock, payable in December, was not declared.

Commenting about this, R. A. Long, Chairman of the Board, said that during the past year the lumber industry of the country has been experiencing very unsatisfactory market conditions in consequence of the production exceeding the demand, and the passing of the dividend was merely indicative of a conservative policy, such as has always controlled the Company, to protect its cash position. In his opinion, because of the rapid depletion of the timber in the South, it is only a question of a rather short time when the lumber price level will be considerably higher than now obtains.

He also stated that during his more than fifty years in the lumber business there have been recurring periods similar to what is now being experienced, followed by longer periods of profitable returns, and many years ago when the industry was depressed because of market conditions, he told his associates that the average over a somewhat extended time would be the only logical basis for passing judgment on results to be obtained. He further stated that in consequence of the Company's yearly production being more than eight hundred million feet of lumber per year, a difference in price of only a few dollars per thousand would make a large difference in its returns; that the Company has completed its new mills on the Pacific Coast, and hence is in position to take maximum advantage of any market improvement.

Mr. Long observed that the general depressed condition of the lumber business had made itself felt in the market price of the Company's securities and regarding its bonds he knew of nothing fundamental in the situation to justify the present low market price; that they are well secured, such security at all times being standing timber of an appraised value of not less than 100% of the bonds outstanding and other property of an appraised value to equal, together with the standing timber, not less than 200% of the bonds outstanding, with a provision that property once valued can never again be appraised as bond security for a larger amount, regardless of how much it may increase in value. He also mentioned that bond interest and all other obligations have been paid on or before maturity throughout the more than fifty years of existence of the Company and that there is not the least likelihood that this

will not continue to be its record, and especially so since it is now under the same general management that has been in charge since the beginning of the business.

He said that the net book assets equal more than $95.00 for each share of Class A stock outstanding; and the Class A stock has the prior right to participate in the assets up to $50.00 a share and accrued dividends.

As having a bearing on the price of the securities he stated that during this period of depression in the lumber industry, all lumber companies are going through a period of low earnings, but this, however, is more generally known of Long-Bell than of other lumber companies because it is the only lumber company having stock listed on the New York Stock Exchange and is required to publish its earnings quarterly, whereas other lumber firms not being similarly situated do not. Since the public consequently does not have an opportunity to compare Long-Bell earnings with other representative lumber concerns, Mr. Long expressed the belief that because of this the public is without a very necessary viewpoint as a guide for appraising the value of Long-Bell securities.

With reference to the market trend of the company's bonds and stock, he stated to predict what may happen in the future is perhaps unwise, but nevertheless he would be so incautious as to do so, saying the bonds are worth 100 cents on the dollar and it does not seem to him unreasonable to assume, within a period of three years or less, the market value will reach, or at least approximate such a figure, and for the Class A stock he is expecting a price of $50.00 or more per share within less than two years, with the time for such improvement of the price of the stock considerably shortened if the lumber market should materially advance during the next year.

PLAINTIFF'S EXHIBIT 19-B.

Financial Statement

of

The Long-Bell Lumber Corporation

and

Subsidiary Companies

April 30, 1930.

The Long-Bell Lumber Corporation
and
Subsidiary Companies
Combined Income Capital Stock and Surplus Account

Consolidated Income Account

Profit for the 4 months ended April 30, 1930 before deducting, Depletion, Depreciation and Interest Charges		1,467,590.74
Less: Depletion	762,234.42	
Depreciation	430,307.35	
Interest Charges	660,457.98	
		1,852,999.75
Net Profit for the 4 Months ended April 30, 1930		*385,409.01**

* Figures in italics indicate red ink.

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Consolidated Capital Stock & Surplus

Capital Stock & Surplus December 31, 1929 as per the books of The Long-Bell Lumber Corporation and Subsidiaries	59,702,348.16	
Minority Shareholders Interest in Subsidiaries	598,773.34	
		60,301,121.50
Deductions:		
Loss for the 4 months ended April 30, 1930 as per Income Account	385,409.01	
Other Surplus Debits	4,118.82	
		389,527.83
Capital Stock & Surplus April 30, 1930 as per the books of The Long-Bell Lumber Corporation and Subsidiaries	59,318,637.30	
Minority Shareholders Interest in Subsidiaries	592,956.37	
		59,911,593.67

Note: Adjustment by Auditors as of December 31, 1929 not made on the books—132,043.60.

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			Balance, April 30, 1930
ASSETS			
Current:			
Cash		2,790,868.71	
Notes Receivable	228,038.20		
Accounts Receivable	3,311,795.13		
	3,539,833.33		
Less Reserve for Losses	116,440.93	3,423,392.40	
Inventories		10,308,691.79	
Cash Value of Life Insurance		353,827.15	16,876,780.41
Other Assets:			
Land and Re Sales Contracts		1,656,881.81	
Sundry Accounts, Notes and Securities		3,296,692.90	
Bal. Due on Timber Sales Agrmt.	7,074,571.66		
Less Reserve for Unearned Interest	892,505.49	6,182,066.17	11,135,140.88
Stumpage:			
Southern Yellow Pine and Hardwood		1,833,655.78	
California		5,118,760.92	
Northwestern		26,205,012.76	33,157,429.46
Land at Cost			4,591,183.42
Plant, Buildings and Equipment:			
Southern and California Manufacturing Plants		16,237,476.11	
Less Reserve for Depreciation		8,869,294.20	7,368,181.91
Northwestern: Mfg. Plants, Townsites and Suburban Re Improvements and RRS.		40,759,996.34	
Less Reserve for Depreciation		3,224,284.18	37,535,712.16
Treasury Stock at Cost			219,523.86
Diking and Local Dist. Bonds:			
Bonds Sold and Guaranteed (Per Contra)			4,558,000.00
Deferred Expenses—Unamortized Bond Discount			2,325,088.53
			117,767,040.63
LIABILITIES			
Current:			
Notes Payable—At Banks	5,300,000.00		
Notes Payable—Others	372,032.42	5,672,032.42	
Accounts Payable		1,273,959.95	
Accrued Expenses		2,381,824.60	9,327,616.97
Reserves:			
Land and Re Sales Contracts		299,887.06	
Stock Contracts		619,084.00	
Contingency		300,000.00	
Other Purposes		353,716.32	1,571,687.33
Bond and Other Deferred Indebtedness:			
6% Sinking Fund Gold Bonds		24,575,000.00	
Other Bonds and Serial Notes		296,000.00	
Convertible 5 Year 7% Collateral Notes		3,246,900.00	
L. P. & N. Sink. Fund Gold Bonds	3,250,000.00		
Owned by L.-B. Lumber Co.	3,246,900.00	3,100.00	
Timber, Land and Plant Purch. Contracts		12,884,131.18	
Other Long Term Notes		1,393,011.43	42,398,142.61
Diking and Local Improvement Dist. Bonds:			
Sold and Guaranteed (Per Contra)			4,558,000.00
Nominal: Minority Shareholders Int. in Subsidiaries.			592,956.37
Capital Stock			59,318,637.30
593,921 Shares "A"			117,767,040.63
542,569 Shares "B"			

April Increase			4 Month's Increase		
	143,836.79			193,816.35	
19,079.79			35,806.27		
90,677.49			528,979.46		
109,757.28			564,785.72		
210.72	109,968.00		1,507.08	563,278.65	
	177,124.88			281,133.07	
	—	143,256.09		—	1,038,228.07
	34,502.68			*109,792.82*	
	982,438.74			1,099,928.30	
95,460.08			*257,401.48*		
112,782.35	*17,322.27*	930,613.79	*189,967.64*	*47,433.84*	942,701.64
	57,985.07			*149,212.73*	
	24,020.65			*89,971.84*	
	89,869.45	*171,875.17*		2,841.25	*236,343.32*
		753.24			*3,479.11*
	7,982.54			26,492.67	
	39,395.39	*31,412.85*		188,624.50	*162,131.83*
	61,716.66	—		170,272.13	
	59,351.16	2,365.50		192,015.66	*21,743.53*
		—			114,185.94
		—			*49,000.00*
		78,509.15			*53,603.66*
		795,191.45			1,568,814.20
11,237.80	11,237.80		1,300,000.00		
			63,939.86	1,236,060.14	
	90,390.86			*30,311.49*	
	649.59	102,278.25		235,315.20	1,441,063.85
	6,264.05			*22,324.22*	
	—			—	
	5,965.10	*288.95*		6,365.94	*15,958.28*
	59,500.00			*172,100.00*	
	—			—	
	—			—	
	22,812.40			*106,526.40*	
	855,882.22	773,569.82		860,862.86	582,236.46
		1,175.44			*49,000.00*
		79,192.23			*5,816.97*
					383,710.86
		795,191.45			1,568,814.20

PLAINTIFF'S EXHIBIT B-20.

Financial Statement
of
The Long-Bell Lumber Corporation
and
Subsidiary Companies

March 31, 1930.

The Long-Bell Lumber Corporation
and
Subsidiary Companies
Combined Income Capital Stock and Surplus Account

Consolidated Income Account

Profit for the 3 months ended March 31, 1930 before deducting Depletion, Depreciation and Interest Charges		1,001,977.57
Less Depletion	498,861.28	
Depreciation	315,588.35	
Interest Charges	492,569.28	
		1,307,018.91
Net Profit for the 3 months ended March 31, 1930		*305,041.34*

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Consolidated Capital Stock and Surplus

Capital Stock and Surplus December 31, 1929 as per the books of The Long-Bell Lumber Corp. and Subsidiaries	59,702,348.16	
Minority Shareholders Interest in Subsidiaries	598,773.34	
		60,301,121.50
Deductions:		
Loss for the 3 months ended March 31, 1930 as per Income Account	305,041.34	
Other Surplus Debits	4,118.82	
		309,160.16
Capital Stock and Surplus March 31, 1930 as per the books of The Long-Bell Lumber Corporation and Subsidiaries	59,397,829.53	
Minority Shareholders Interest in Subsidiaries	594,131.81	
		59,991,961.34

Note:—Adjustment by Auditors as of December 31, 1929 not made on the books—$132,043.60.

			Balance, March 31, 1930
ASSETS			
Current:			
Cash		2,934,705.50	
Notes Receivable	208,958.41		
Accounts Receivable	3,221,117.64		
	3,430,076.05		
Less Reserve for Losses	116,651.65	3,313,424.40	
Inventories		10,131,566.91	
Cash Value of Life Insurance		353,827.51	16,733,524.32
Other Assets:			
Land and Re Sales Contracts		1,690,884.49	
Sundry Accounts, Notes and Securities		2,314,254.16	
Balance Due on Timber Sales Agmt.	6,979,111.58		
Less Reserve for Unearned Interest	779,723.14	6,199,388.44	10,204,527.09
Stumpage:			
Southern Yellow Pine and Hardwood		1,891,640.85	
California		5,142,781.57	
Northwestern		26,294,882.21	33,329,304.63
Land at Cost			4,590,430.18
Plant Buildings and Equipment:			
Southern and California Mfg. Plants		16,229,493.57	
Less Reserve for Depreciation		8,829,898.81	7,399,594.76
Northwestern: Mfg. Plants, Townsites and Suburban Re Improvements and Railways		40,698,279.68	
Less Reserve for Depreciation		3,164,933.02	37,533,346.66
Treasury Stock at Cost			219,523.86
Diking and Local Dist. Bonds:			
Bonds Sold and Guaranteed (Par Contra)			4,558,000.00
Deferred Exp.—Unamortized Bond Discount			2,403,597.68
			116,971,849.18
LIABILITIES			
Current:			
Notes Payable—At Banks	5,300,000.00		
Notes Payable—Others	360,794.62	5,660,794.62	
Accounts Payable		1,183,569.09	
Accrued Expenses		2,380,975.01	9,225,338.72
Reserves:			
Land and Re Sales Contracts		305,141.11	
Stock Contracts		619,084.00	
Contingency		300,000.00	
Other Purposes		347,751.22	1,571,976.33
Bonds and Other Deferred Indebtedness:			
6% Sinking Fund Gold Bonds		24,634,500.00	
Other Bonds and Serial Notes		296,000.00	
Convert 5 Year 6% Collateral Notes		3,246,900.00	
L. P. & N. Sinking Fund Gold Bonds	3,250,000.00		
Owned by the L.-B. Lbr. Co	3,246,900.00	3,100.00	
Timber, Land and Plant Purchasing Contracts		12,906,943.58	
Other Long Term Notes		537,129.21	41,624,572.79
Diking and Local Improvement Dist. Bonds: Sold and Guaranteed (Per Contra)			4,558,900.00
Nominal: Minority Shareholders Interest in Subsidiaries			594,131.81
Capital Stock			59,397,829.53
593,921 Shares "A"			
542,569 Shares "B"			116,971,849.18

March Increase			Three Month's Increase		
	553,797.26			337,653.14	
30,907.37			16,726.48		
160,749.98			438,301.97		
191,657.35			455,028.45		
2,741.30	188,916.05		1,717.80	453,310.65	
	35,810.40			104,008.19	
	—	706,902.91		—	894,971.98
	21,192.03			*75,290.14*	
	36,278.55			117,489.56	
362,122.37			*332,867.56*		
280,684.69	*81,437.68*	*66,351.16*	*302,749.99*	*30,111.57*	12,087.85
	30,251.63			*91,227.66*	
	18,595.80			*65,951.19*	
	78,640.49	*127,487.92*		92,710.70	*64,468.15*
		1,906.22			*4,232.35*
	4,912.47			18,510.13	
	47,093.17	*52,005.64*		149,229.11	*130,718.98*
	32,105.68			108,555.47	
	49,775.65	*17,669.97*		132,664.50	*24,109.03*
		3,756.14			114,185.94
		16,000.00			*49,000.00*
		17,687.20			24,905.49
		411,550.94			773,622.75
300,000.00			1,300,000.00		
24,122.11	275,877.89		*75,177.66*	1,224,822.34	
	67,742.92			*120,702.35*	
	218,698.19	561,719.00		234,665.61	1,338,785.60
	2,428.16			*16,070.17*	
	—			—	
	—			—	
	2,964.35	536.19		400.84	*15,669.33*
	45,700.00			*112,600.00*	
	—			—	
	—			—	
	66,527.19			*83,714.00*	
	21,979.72	*90,247.47*		4,980.64	*191,333.36*
		16,000.00			*49,000.00*
		983.08			*4,641.53*
		43,473.70			*304,618.63*
		411,550.94			773,622.75

PLAINTIFF'S EXHIBIT B-21.

Financial Statement
of
The Long-Bell Lumber Corporation
and
Subsidiary Companies

May 31, 1930

The Long-Bell Lumber Corporation
and Subsidiaries
Combined Income, Capital Stock and Surplus Account
For the Five Months, Ended May 31, 1930

Consolidated Income Account

Profit for the 5 months ended May 31, 1930 before deducting Depletion, Depreciation, and Interst Charges		1,824,625.93
Less—Depletion	917,385.79	
Depreciation	545,932.26	
Interest Charges	835,537.88	
		2,298,855.93
Net Profit for the 5 months ended May 31, 1930		*474,230.00*

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Consolidated Capital Stock and Surplus

Capital Stock and Surplus December 31, 1929 as per the books of The Long-Bell Lumber Corporation and Subsidiaries	59,702,348.16	
Minority Shareholders Interest in Subsidiaries	598,773.34	
		60,301,121.50
Deductions:		
Loss for the 5 months ended May 31, 1930 as per Income Account	474,230.00	
Other Surplus Debits	4,118.82	
		478,348.82
Capital Stock and Surplus May 31, 1930, as per the books of The Long-Bell Lumber Corporation and Subsidiaries	59,231,150.10	
Minority Shoreholders Interest in Subsidiaries	591,622.58	
		59,822,772.68

Note:—Adjustment by Auditors as of December 31, 1929 not made on the books—$132,043.60.

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PLAINTIFF'S EXHIBIT B21

		Balance, May 31, 1930	
ASSETS			
Current:			
Cash		2,178,315.20	
Notes Receivable	309,067.33		
Accounts Receivable	3,431,920.91		
	3,740,988.24		
Less Reserve for Losses	118,699.68	3,622,288.56	
Inventories		9,971,043.37	
Cash Value of Life Insurance		353,827.51	16,125,474.64
Other Assets:			
Land and Re Sales Contracts		1,624,204.39	
Sundry Accounts, Notes and Security		3,104,521.08	
Balance Due Timber Sales Agmt	6,925,353.78		
Less Reserve Unearned Interest	760,502.94	6,164,850.84	10,893,576.31
Stumpage:			
Southern Yellow Pine and Hardwood		1,803,164.79	
California		5,113,666.43	
Northwestern		26,286,128.25	33,202,959.47
Land at Cost			4,594,217.91
Plant Buildings and Equipment:			
Southern and California Mfg. Plants		16,251,060.07	
Less Reserve for Depreciation		8,904,056.42	7,347,003.65
Northwestern: Mfg. Plants, Townsites and Suburban Re Improvement and Railways		40,839,873.38	
Less Reserve for Depreciation		3,276,060.17	37,563,813.21
Treasury Stock at Cost			219,523.86
Diking and Local District Bonds:			
Bonds Sold and Guaranteed (Per Contra)			4,467,000.00
Deferred Expenses, Unamortized Bond Dis.			2,319,489.85
			116,733,058.90
LIABILITIES			
Current:			
Notes Payable—At Banks	5,300,000.00		
Notes Payable—Others	312,014.73	5,612,014.73	
Accounts Payable		1,097,261.32	
Accrued Expenses		2,178,124.70	8,887,400.75
Reserves:			
Land and Re Sales Contracts		292,736.28	
Stock Contracts		619,084.00	
Contingency		300,000.00	
Other Purposes		353,671.05	1,565,491.33
Bonds and Other Deferred Indebtedness:			
6% Sinking Fund Gold Bonds		24,344,900.00	
Other Bonds and Serial Notes		278,000.00	
Convertible 5 Year 6% Collateral Notes		3,246,900.00	
L. P. & N. Sinking Fund Gold Bond	3,250,000.00		
Owned by Long-Bell Lbr. Co.	3,246,900.00	3,100.00	
Timber Land and Plant Purchases Contracts		13,674,227.01	
Other Long Term Notes		443,267.13	41,090,394.14
Diking and Local Improvement District Bonds:			
Sold and Guaranteed (Per Contra)			4,467,000.00
Nominal: Minority Shareholders Int. in Subsidiaries			591,622.58
Capital Stock			59,231,150.10
593,921 Shares "A"			116,733,058.90
542,569 Shares "B"			

May Increase			5 Month's Increase		
	612,553.51			*418,737.16*	
81,029.13			116,835.40		
120,125.78			649,105.24		
201,154.91			765,940.64		
2,258.75	198,896.16		3,765.83	762,174.81	
	337,648.42			*56,515.35*	
	—	*751,305.77*		—	286,922.50
	32,177.42			*141,970.24*	
	102,171.82			*907,756.48*	
149,217.88	—		*386,619.36*	—	
132,003.55	*17,215.33*	*241,564.57*	*321,970.19*	*64,649.17*	701,137.07
	30,490.99			*179,703.72*	
	5,094.49			*95,066.33*	
	81,115.49	45,530.01		83,956.74	*190,813.31*
		3,034.49			*444.62*
	13,583.96			40,076.63	
	34,762.22	*21,178.26*		223,386.72	*183,310.09*
	79,877.04			250,149.17	
	51,775.99	28,101.05		243,791.65	6,357.52
		—			114,185.94
		91,000.00			*140,000.00*
		5,598.68			*59,202.34*
		1,033,981.73			534,832.47
—					
60,017.69	*60,017.69*		1,300,000.00		
			123,957.55	1,176,042.45	
	176,698.63			*207,010.12*	
	203,499.90	*440,216.22*		31,815.30	1,000,847.63
	6,150.78			*28,475.00*	
	—			—	
	45.27	*6,196.05*		*6,320.67*	*22,154.33*
	230,100.00			*402,200.00*	
	18,000.00			*18,000.00*	
—			—		
	209,904.17			683,569.43	
	50,255.70	407,748.47		*88,881.44*	174,487.99
		91,000.00			*140,000.00*
		1,333.79			*7,150.76*
		87,487.20			*471,198.06*
		1,033,981.73			534,832.47

PLAINTIFF'S EXHIBIT B-22.

R. A. Long
Chairman
The Long-Bell Lumber Company
Kansas City, Mo.

May 29, 1930.

Mr. F. K. Shrader,
Halsey, Stuart & Company,
201 South LaSalle Street,
Chicago, Illinois.

My dear Mr. Shrader:

As you no doubt know from your file, we talked and corresponded with Mr. Stuart concerning the Lamm and Kesterson contracts during your absence.

The two contracts do not necessarily need to be joined together as one transaction. Mr. Stuart wrote us for balance sheet and income account of the two companies. We have not, however, gotten what is wanted from the Kesterson Company, and we have decided to eliminate the Kesterson contract for the present, allowing it to carry over for a separate transaction at some later time. We will, therefore, ask you to confine your thinking to the Lamm contract only, which will reduce the amount involved substantially, and this may also be helpful to you in the matter of working out something that may be consummated at an early time.

Enclosed is balance sheet of the Lamm Lumber Company. You now have in your file income account of the Lamm Lumber Company, certified by an independent auditor, for the period 1923-1929.

The remainder of this letter will refer to details of the Lamm contract that your consideration of the subject may be more concrete than it otherwise could be.

The Lamm contract provides that there shall be designated an area which will yield 600,000,000 feet. To be on the safe side, the present contract only carries a detailed description of 24,300 acres, to which we attached what we deemed to be an outside cruise, which totaled 595,000,000 feet. Discounting this amount somewhat liberally to get at a conservative amount for the purchase price of the land described in the contract produces $3,141,000.00, and subtracting from this the amount that Lamm has already paid, $320,000.00 leaves a remainder of $2,821,000.00, as an esti-

mated amount which you can use in your present consideration, that we will be attempting to finance.

It seems to us that with respect to the remainder of the land which is to be designated several years hence, the logical thing to do would be to exempt that feature of the contract from any present financing, and thus it would be a matter to be worked out when the time came between us and Lamm Lumber Company, in which those advancing money now would not be interested.

The Trustee has never made an actual release of any land in connection with the sale to the Lamm Lumber Company. What the Trustee has done has been to agree to release the land at a time in the future when all of the terms and provisions of the Lamm contract have been complied with, which is exactly what we requested of the Trustee.

It has occurred to us that the Trustee might be willing to waive, or, as it were, "forget" what has occurred pertaining to the Lamm sale and permit us to pay into the sinking fund in accordance with the provisions of our deed of trust the sinking fund value of the timber on the land now described in the Lamm contract. Deducting the amount that has already been paid the Trustee, on the cruise above referred to, this would require $1,286,000.00, which subtracted from the present unpaid balance earlier mentioned, $2,821,000.00, would leave a remainder free to the company of $1,535,000.00, less such deduction as would be necessary to accomplish the financing of the Lamm contract such as we are seeking.

This feature of additional money to improve our current position is, as I mentioned in letter to Mr. Stuart, very important to us now, because of the sensitive, nervous and critical attitude of commercial bankers.

I, of course, know that you cannot quickly arrive at anything which you might consider a complete answer to this letter, but I would appreciate your letting me know as promptly as you can, how you feel about the possibility of doing something with this setup involving, as it does, a much smaller amount than we have previously discussed.

Very truly yours,

(Sgd) R. A. Long,
R. A. Long,
Chairman.

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FINANCIAL STATEMENT OF THE LAMM LUMBER COMPANY

Modoc Point, Oregon

Statement of Condition as of May 1, 1930

Corrected for application of $400,000.00 Long Term Loan

ASSETS			LIABILITIES		
Cash in Hand and Banks	60,053.82		Notes Payable, Banks		
Accounts Receivable	122,273,39		Notes Payable, Others		
Log Stock	28,700.00		Trade Acceptances		
Lumber Stock	292,528.64		Accounts Payable	63,635.67	
By-Products Stock	5,250.00		Pay Roll Accrued	21,616.92	
Merchandise For Sale	11,371.22				
Miscellaneous Supplies	15,818.30				
Unexpired Insurance	4,072.13				
Notes Rec.	15,747.24				
Total Current		555,814.74	Total Current		85,252.59
Mill Plant Investment	838,464.00		Long Term Notes Payable	650,000.00	
Less Depreciation	326,954.10		Employees Savings	14,861.80	
Net		511,509.90	Equipment Contracts	97,158.39	
Woods Plant Investment	104,899.32		Timber Notes and Contracts	3,280,000.00	
Less Depreciation	39,632.03		Accrued Interest	1,732.21	
Net		65,267.29	Def. Inc.	25,000.00	
Yamsay Mountain R. R.	521,203.81		Fire Loss Suspense	25,052.04	
Less Depreciation	4,475.54		Stkhlder. & Others	62,000.00	
Net		516,728.27	Total Deferred		4,155,804.44
Timber	3,600,000.00		Reserve Provided From Earnings for Future Increase In Cost of Timber	86,161.91	
Less Depletion	31,510.62				
Net		3,568,489.38	Capital Stock	500,000.00	
Other Assets			Surplus, First of Year	431,191.93	
Tools and Supplies	15,742.38		Surplus, This Year to Date, after Providing Addition to Timber Reserve of $	10,527.14	
Winter Expense	34,213.05				
Yamsay R. R. Oper	1,173.00				
Total Other Assets		51,128.43	Total Net Worth		1,027,880.98
Total Assets		5,268,933.01	Total Liabilities		5,268,938.01

LAMM LUMBER COMPANY
By W. E. Lamm Dated May 22, 1930

PLAINTIFF'S EXHIBIT B-23.

Chicago Office.

May 8, 1930.

Mr. B. C. Kelley,
Chicago Office.

Frank just told me that you want a schedule of the position of the Longview, Washington, Bonds, which will give you an idea of the number of bonds which have been called in each District as compared with the original amount, etc. The following chart should give you the desired information:

District Number	Original Amount	Dated	Called to Date	Last Nos. Called
1	$426,815.81	9-25-25	$168,815.81	170
2	235,133.96	9-25-25	99,133.96	100
3	88,740.12	10-15-25	52,740.12	54
4	239,534.26	10-15-25	113,534.26	111
5	210,679.44	10-15-25	116,679.44	115
6	108,315.02	10-15-25	47,315.02	43
7	116,870.08	1-23-26	43,870.08	45
8	13,598.20	12-15-25	5,598.20	7
9	4,261.07	12-15-25	2,261.07	3
10	11,344.52	12-21-25	6,344.52	7
11	908,699.57	5-27-26	253,699.57	254
12	225,298.51	2-5-27	66,298.51	67
13	10,523.54	8-31-26	2,523.54	3
14	11,935.25	10-1-26	2,935.25	3
15	4,860.78	10-1-26	860.78	1
17	21,625.40	7-31-26	5,625.40	6
18	34,960.93	10-1-26	8,960.93	9
19	464,104.47	1-5-27	137,104.47	138
20	12,425.72	11-30-26	2,425.72	3
Totals	$3,149,726.65		$1,136,726.65	

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PLAINTIFF'S EXHIBIT B-24.

Halsey, Stuart & Co.
Incorporated

201 South La Salle Street
Telephone State 3900
Chicago, May 14, 1930

Mr. F. W. Hubbell,
Equitable Life Insurance Company,
Des Moines, Iowa.

Dear Mr. Hubbell:

As outlined by our representative, Mr. Kelley, we wish to formally offer you, subject, $100,000 Longview, Washington, Local Improvement 6's due in various amounts from 1937 to 1939, inclusive; $85,000 of this amount we can make immediate delivery on, and the remaining $15,000 are offered for delayed delivery.

We are suggesting this issue in exchange for $100,000 State of Louisiana 5% Highway Bonds due March 1931, for which we make a subject bid of 4½% basis.

In connection with this offering, we might add that on a firm bid for a block of $200,000 to $300,000, without reference to time for filling the order, that there is a good possibility that we will be able to acquire bonds in the open market from time to time to satisfy your requirements. Obviously, we would not want to undertake such a market purchase within a short period, as these bonds are rather closely held and blocks are offered in the market rather infrequently.

We believe you have before you practically all the data covering this issue of bonds, but if you have any questions in mind, we shall be pleased indeed to have you call Mr. Kelley or this office for anything that you may need.

You observe, of course, that this city has no funded debt, other than these Improvement Bonds, and that the original debt has been materially reduced through retirement and maturity.

Awaiting you further advices,

Very truly yours,
(Sgd) Halsey, Stuart & Co.
Frank A. Wood.

FAW:HH

O. K. @ 6% less ¼ for 100M. H.S.N. F.C.H. F.W.H. J.W.H. G.J.

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PLAINTIFF'S EXHIBIT B-34.

Consolidated Balance Sheet
The Long-Bell Lumber Corporation
and Subsidiary Companies
Kansas City, Missouri

January 1, 1930

The Long-Bell Lumber Corporation

Officers and Directors

R. A. Long, Chairman	Kansas City, Mo.
M. B. Nelson, President	Kansas City, Mo.
J. H. Foresman, Vice-President	Kansas City, Mo.
J. D. Tennant, Vice-President	Longview, Wash.
W. L. Prickett, Vice-President	Kansas City, Mo.
S. M. Morris, Vice-President	Longview, Wash.
R. T. Demsey, Vice-President	Kansas City, Mo.
E. C. N. Brown, Vice-President	Kansas City, Mo.
R. W. Stith, Secretary-Comptroller	Kansas City, Mo.
R. P. Combs, Treasurer	Kansas City, Mo.
Jesse Andrews	Kansas City, Mo.
J. H. Bester	Kansas City, Mo.
Henry S. Bowers	New York, N. Y.
L. L. Chipman	Longview, Wash.
R. S. Davis	Kansas City, Mo.
A. B. Everitt	Kansas City, Mo.
John M. Hancock	New York, N. Y.
G. A. Houston	Kansas City, Mo.
J. H. Lane	Kansas City, Mo.
Roy F. Morse	Longview, Wash.
A. L. Sweet	Kansas City, Mo.

W. A. Barker, Assistant Secretary	Kansas City, Mo.
L. C. Stith, Assistant Secretary	Longview, Wash.

Executive Office
R. A. Long Building
Kansas City, Missouri

The Long-Bell Lumber Corporation
Kansas City, Mo.

March 12, 1930.

To the Stockholders of
The Long-Bell Lumber Corporation:

Financial report for the year ending December 31st, 1929, is submitted herewith.

Results from our operations during the first six months of 1929 held up to expectations, but building construction, begining with July, showed a marked falling off, due to the high interest rate caused by the stock speculation. General conditions during the closing months following the break in the stock market very seriously affected the consumption of lumber, which was reflected in our business.

The last two weeks have shown some increase in demand, but prices have not improved and indications are not very flattering for the immediate future. Reports, however, indicate an increase in building construction during the next three months which should have its effect on our business. Stocks in the hands of distributors and large industrial consumers are on a lower level than for many years, and stocks in the hands of the manufacturers are not excessive. A number of large mills in the South are cutting out this year and small mill production is less than for several years, so we are believing the worst is behind us and expecting some improvement in the second quarter over the first quarter. What the last two quarters of the year will be depends largely upon crops and general business conditions.

The forecast from the best agencies, such as the F. W. Dodge Corporation, the American Builder and the Copper & Brass Research Association, indicate that the building program for 1930 will be slightly greater than 1929; and since home building has suffered more than any other kind of construction during the last eight or nine months, due to high money rates, it is believed that with an improvement in the financial situation in this respect there will be considerable increase in this class of construction which heretofore has taken a large percentage of the lumber cutput.

The Long-Bell Lumber Corporation,
M. B. Nelson,
President.

(Letterhead of Ernst & Ernst, Kansas City.)

March 10, 1930.

To the Officers and Board of Directors,
The Long-Bell Lumber Corporation,
Kansas City, Missouri.

Gentlemen:

We Hereby Certify that we have audited, as of the close of business December 31, 1929, the books of account and record pertaining to the assets and liabilities of The Long-Bell Lumber Corporation, Kansas City, Missouri, and its Subsidiary Companies as follows:

Direct Subsidiary

The Long-Bell Lumber Company (98.94% owned by The Long-Bell Lumber Corporation)

	Per Cent of Stock Owned by The Long-Bell Lumber Co.
Subsidiaries of the Long-Bell Lumber Company	
Long-Bell Farm Land Corporation	100.00
The Longview Company	100.00
The Longview Suburban Company	100.00
The Longview Dredging & Construction Company	100.00
The Longview Stevedoring Company	100.00
Longview, Portland & Northern Railway Company	100.00
Long-Bell Service Station, Inc.	100.00
Louisiana & Pacific Railway Company	90.196
The Sibley, Lake Bisteneau & Southern Railway Company	94.638
Mississippi Eastern Railway Company	99.339

	Per Cent of Stock Owned by The Longview Co.
Subsidiaries of the Longview Company	
The Longview Ferry Company	100.00
Longview Public Service Company	100.00
Longview Memorial Park	100.00

Cash on deposit was verified by certification received from the depository banks and securities were examined

by us or otherwise verified. Current notes and accounts receivable consist of the following:

	Accounts	Notes	Total
Wholesale Division, after deducting estimated freight of $324,213.92	$1,263,228.03	$ 32,911.64	$1,296,139.67
Retail Yards	850,489.36	191,191.66	1,041,681.02
Store and Other	580,140.11	47,060.19	627,200.30
	$2,693,857.50	$271,163.49	$2,965,020.99

We have reviewed the notes and accounts receivable carried, and based upon our examination and information relative thereto furnished us by officers of the Company, it is our opinion that reasonable allowance has been provided for probable shrinkage in these assets.

Inventories at December 31, 1929, aggregated $10,030,435.05 as set forth in the following summary:

Logs	$ 686,019.89
Lumber and Lumber Products at Mills	5,354,069.41
Creosoting Material, etc.	569,947.89
Lumber, Coal and Building Material at Yards	2,423,802.97
Stock of General Merchandise	666,598.93
Plant Supplies, etc.	329,995.96
	$10,030,435.05

Log inventories are valued at cost at point of location and lumber inventories of producing divisions are valued at the lower of cost or market, cost representing stumpage at book value plus logging and production cost. Lumber inventories of retail yards and other products and merchandise are valued at cost or market, whichever is lower, and deduction has been made to eliminate estimated intercompany profit.

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Other Assets shown in the accompanying Balance Sheet comprise the following items:

Real Estate Notes and Contracts:		
For Sales of Southern Farm Lands	$ 470,403.78	
For Sales of Farm Lands and Real Estate at Longview, Washington	1,254,126.17	
Accrued Interest on above	43,694.20	$ 1,768,224.15
Unpaid Capital Stock Subscriptions of Officers and Employees		708,685.66
Other Accounts and Notes Receivable, Securities, etc.		1,663,093.13
Balance due on timber sales contracts less unearned interest		6,229,500.01
		$10,369,502.95

Stumpage (standing timber) stated at the book value of $33,400,365.80 consists of holdings in four southern states, California, Oregon and Washington, aggregating 9,475,300,174 feet, averaging $3.52 per thousand feet.

Certain holdings having a book value of $21,454,272.76 were appraised by James D. Lacey and Company, Chicago, Illinois, prior to the dates of issue of the Company's first mortgage bonds and based upon their reports of values as of the dates of appraisal, the appraised values are approximately $11,000,000.00 in excess of the book value of $21,454,272.76 at December 31, 1929.

Timber-land holdings, exclusive of timber thereon, farm lands, mill and town sites and suburban land are stated at the aggregate book value of $12,891,684.43, without appraisal by us.

Following is a summary of plant, buildings and equipment which are stated at the book values:

Buildings, Manufacturing and Logging Equipment, Stores, Tenements, etc., of Lumber and Sash and Door Manufacturing Divisions	$36,072,043.36
Yard and Equipment of Creosoting and Glazing Plants	291,015.82
Land, Buildings and Appurtenances comprising the sites and improvements of 110 Retail Yards located in the States of Missouri, Kansas, Oklahoma, Texas, New Mexico, Oregon and Washington	2,202,236.73
Railroad Properties located in operating territories	6,344,263.23
Miscellaneous Operating and Rental Buildings and Equipment	3,150,382.19
Other Equipment, etc.	296,648.62
	$48,356,589.95
Less Allowance for Depreciation	11,753,260.22
	$36,603,329.73

Depreciation has been provided on the books on basis approved by the Officers or Executive Committees of the Companies. Provision for depreciation on lumber manufacturing plants is computed on basis of present timber holdings and estimated additional timber available to western mills, allowance being made for estimated salvage value.

The stated liability of The Long-Bell Lumber Company and Subsidiaries on bonds and other deferred indebtedness was verified by the Trustees under the respective mortgages and by the holders of notes and land and timber purchase contracts.

First Mortgage 6% Sinking Fund Gold Bonds of The Long-Bell Lumber Company consist of $10,000,000.00 Series "A" bonds dated July 1, 1922, $10,000,000.00 Series "B" bonds dated April 1, 1923, and $8,000,000.00 Series "C" bonds dated July 1, 1926, of which the aggregate amount of $24,881,800.00 was issued and outstanding at December 31, 1929. Bonds amounting to $3,118,200.00 including bonds retained and bonds purchased by the Company have been retired to December 31, 1929, and at that date bonds in the amount of $134,700.00 were carried in the treasury of the Company.

Redemption of bonds outstanding at December 31, 1929, is required by provision of the mortgage as set forth in the following schedule:

1930	$ 631,800.00	1939	$ 1,900,000.00
1931	1,100,000.00	1940	2,200,000.00
1932	1,300,000.00	1941	2,200,000.00
1933	1,300,000.00	1942	2,200,000.00
1934	1,500,000.00	1943	1,400,000.00
1935	1,700,000.00	1944	600,000.00
1936	1,800,000.00	1945	600,000.00
1937	1,900,000.00	1946	650,000.00
1938	1,900,000.00		
			$24,881,800.00

Maturities of land and timber purchase contracts and notes payable are summarized in the following schedule:

Timber Purchases	Total
1930	$ 1,569,997.47
1931	1,489,305.17
1932	1,230,649.80
1933	1,570,129.00
1934	765,112.00
1935	765,112.00
1936	765,112.00
1937	765,112.00
1938	765,112.00
1939	765,112.00
1940	765,112.00
1941	765,112.00
1942	765,119.27
	$12,746,096.71
Land Purchases	
Due serially	112,882.50
	$12,858,979.21

Other notes payable, etc., included in deferred obligations consist of the following:

Notes payable for equipment—purchases maturing serially	$ 35,812.50
Notes payable—officers, employees and others	455,000.00
Other obligations maturing serially	387,150.32
	$877,962.82

Current and unfunded obligations reflect the liability of the companies on notes and accounts payable and accrued accounts, as summarized on Balance Sheet.

We are advised by the Company that no tax will be shown by federal income tax return to be filed for the year 1929.

Bonds aggregating $4,607,000.00 guaranteed by The Long-Bell Lumber Company consist of bonds of the amount of $2,554,000.00 issued by Consolidated Diking District No. 1, organized under the laws of the State of Washington and bonds amounting to $2,053,000.00 issued by Local Improvement Districts of the City of Longview, Washington. The diking district bonds were issued to take up warrants, together with interest thereon, which had been issued to The Long-Bell Lumber Company in payment for construction work performed. Bonds of local improvement districts of the City of Longview were issued for expenditures made for various local improvements in the City of Longview.

The diking district bonds mature serially over a period of twelve years and the local improvement district bonds over a period of nine years. Assessments payable in installments have been made by the diking and improvement districts against the land comprised in the respective districts as a means of providing funds for payments of bonds as they mature, together with interest thereon. The proportion of such assessments against land of The Long-Bell Lumber Company and Subsidiaries is set up on the books as it accrues, and the stated liabilities as of December 31, 1929, include accrued assessments amounting to $446,596.05.

At sundry dates heretofore, agreements in the nature of long term profit sharing contracts were entered into by the Company with certain of its officers, and reserve in the amount of $619,084.00 is set up on Balance Sheet to provide for maximum liability as of December 31, 1929, under the terms of these contracts. Other reserves stated on Balance Sheet include unrealized profit on sales of southern farm land.

There is submitted herewith statement showing briefly the transactions affecting the consolidated capital stock and surplus account during the year 1929. Credit of $1,624,367.03 included therein represents the excess over the book value of the consideration set forth in contract made during 1929 for the sale of certain timber holdings. Cash amounting to $200,000.00 had been received on this contract at December 31, 1929, and the balance, after deduct-

ing unearned interest, is included in Other Assets in accompanying Balance Sheet and is payable over a ten year period after April, 1930.

Carrying charges on timber, land and real estate holdings for the year ended December 31, 1929, consisting of interest amounting to $737,108.28 on timber purchase obligations, timber taxes $257,080.47, interest included in diking and improvement districts accrued assessments $214,977.89, and general taxes $87,126.38 on certain property have been capitalized.

Based on the foregoing and on our examination of the records submitted and the information furnished us, it is our opinion that the annexed Consolidated Balance Sheet as drawn up reflects the financial position of The Long-Bell Lumber Corporation and the aforenamed Subsidiaries at December 31, 1929.

Very truly yours,

Ernst & Ernst.

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Consolidated Balance Sheet

The Long-Bell Lumber Corporation and Subsidiaries

At the close of business December 31, 1929

Assets

Current			
Cash		$ 2,599,591.52	
Notes receivable	$ 271,163.49		
Accounts receivable	2,693,857.50		
	$2,965,020.99		
Less allowance for loses	117,694.84	2,847,326.15	
Inventories—lumber, logs, millwork, supplies, etc.		10,030,435.05	
Cash value of life insurance		353,827.51	$ 15,831,180.23
Other Assets			
Land and real estate sales contracts and notes		$ 1,768,224.15	
Sundry accounts, notes, securities, etc.		2,371,778.79	
Balance due on timber sales contracts less unearned interest		6,229,500.01	10,369,502.95
Stumpage (standing timber)			33,400,365.80
Land—at book value			12,891,684.43
Plant, Buildings and Equipment			
Manufacturing plants, retail yards, railroads, creosoting plants, rental property, etc.		$48,356,589.95	
Less allowance for depreciation		11,753,260.22	36,603,329.73
Treasury Stock—at cost			105,337.92
Diking District and Improvement District Bonds Sold and guaranteed—per contra			4,607,000.00
Deferred			
Deferred expenses, unamortized discounts, etc.			2,375,305.44

(Note) The Companies were reported as contingently liable at December 31, 1929, as endorsers on customers' acceptances and drafts discounted in the amount of $72,237.94.

The provision made for taxes is subject to any necessary adjustment upon determination of the final liability of the Companies therefor.

9,975 shares of the capital stock of Longview Suburban Company are deposited with The Central Trust Company, Chicago, Illinois, under trust agreement dated April 1, 1923, covering issue of first mortgage 6% sinking fund gold bonds.

At December 31, 1929, dividends on class "A" stock of The Long-Bell Lumber Corporation had been paid to September 30, 1927.

This Balance Sheet is subject to the comments contained in our Certificate, included in and made a part of this report.

$116,183,706.50

Consolidated Balance Sheet

The Long-Bell Lumber Corporation and Subsidiaries
At the close of business December 31, 1929

Liabilities

Current and Unfunded Obligations			
Notes payable:			
To banks for money borrowed	$4,000,000.00		
Sundry and individual	199,507.00	$4,199,507.00	
Accounts payable:			
For purchases, pay rolls, expenses, etc.	$1,219,230.68		
Officers', employees' and other sundry accounts	378,845.22	1,598,075.90	
Accrued interest and general taxes		2,178,358.01	$ 7,975,940.91
Reserves			
To provide for accruals in accordance with terms of officers' contracts referred to in Certificate		$ 619,084.00	
For land and real estate sales contracts and notes		371,211.28	
For other purposes and contingencies		647,350.38	1,637,645.66
Bonds and Other Deferred Indebtedness			
First mortgage 6% sinking fund gold bonds of The Long-Bell Lumber Company:			
Series "A" maturing serially to July, 1, 1942		$ 8,800,000.00	
Series "B" maturing serially to April 1, 1943		8,697,100.00	
Series "C" maturing serially to August 1, 1946		7,250,000.00	
Convertible five year 6% collateral gold notes of The Long-Bell Lumber Company maturing December 1, 1931		3,246,900.00	
First mortgage 6% gold bonds of Longview, Portland & Northern Railway Company, maturing July 1, 1945	$3,250,000.00		
Less owned by The Long-Bell Lumber Company and deposited as collateral on convertible five year 6% collateral gold notes	3,246,900.00	3,100.00	
Superior Oak Flooring Company bonds assumed—maturing serially to June 1, 1931		60,000.00	
Timber, land and plant purchase obligations secured by liens, etc.		12,858,979.21	
Other notes payable, etc.		877,962.82	
		$41,794,042.03	
Above obligations maturing subsequent to one year		$39,533,971.56	
Above obligations maturing within one year		2,260,070.47	41,794,042.03

Diking District and Improvement District Bonds Guaranteed—per contra		4,607,000.00
Minority Shareholders' Interest in Subsidiary Companies		597,432.36
Capital		
Capital stock	$53,427,306.04	
Class A common stock of no par value, authorized 750,000 shares—issued 593,921 shares.		
Class B common stock of no par value, authorized 550,000 shares—issued 542,569 shares.		
Surplus	6,144,339.50	59,571,645.54
		$116,183,706.50

The Long-Bell Lumber Corporation and Subsidiaries

Consolidated Capital Stock and Surplus Account

December 31, 1929

Capital Stock and Surplus—December 31, 1928		
The Long-Bell Lumber Corporation and its holdings		$58,103,471.23
Minority shareholders' interest in subsidiaries		605,904.24
		$58,709,375.47
Year 1929		
Deductions		
Provision for contingencies and sundry adjustments	$ 179,631.20	
Dividends paid to minority stockholders	20,000.00	199,631.20
		$58,509,744.27
Additions		
Profit for the year after deducting all expenses, taxes, etc., but before deducting operating interest charges and provision for depletion and depreciation	$4,955,283.69	
Excess of sales price of timber contracted for sale over book carrying value referred to in our Certificate	1,624,367.03	
	$6,579,650.72	
Less: Depletion	$1,682,604.15	
Depreciation	1,279,894.99	
Operating interest charges	1,957,817.95	4,920,317.09	1,659,333.63
		$60,169,077.90
Capital Stock and Surplus—December 31, 1929		
The Long-Bell Lumber Corporation and its holdings		$59,571,645.54
Minority shareholders' interest in subsidiaries		597,432.36
		$60,169,077.90

PLAINTIFF'S EXHIBIT B-35.

RECORD OF PURCHASES OF LONGVIEW, WASHINGTON BONDS

Date of Halsey Stuart Confirmation	Date Securities Received	Date of Entry on Journal	District	Principal Amount
5-17-30	5-20-30	5-21-30	1	$ 11,000
5-17-30	5-20-30	5-21-30	7	5,000
5-17-30	5-20-30	5-21-30	12	13,000
5-17-30	5-20-30	5-21-30	17	8,000
5-17-30	5-20-30	5-21-30	18	2,000
5-17-30	5-20-30	5-21-30	19	46,000
				$ 85,000
5-26-30	5-29-30	6-12-30	1	$ 13,000
5-26-30	5-29-30	6-12-30	19	1,000
5-26-30	5-29-30	6-12-30	20	1,000
				$ 15,000
8-19-30	9-29-30	9-29-30	1	$ 2,000
8-12-30	9-29-30	9-29-30	7	1,000
8-12-30	9-29-30	9-29-30	11	1,000
8-19-30	9-29-30	9-29-30	11	5,000
9-26-30	9-29-30	9-29-30	11	5,000
8-19-30	9-29-30	9-29-30	12	3,000
8-12-30	9-29-30	9-29-30	19	9,000
				$ 26,000
10- 7-30	10-10-30	10-10-30	1	$ 5,000
10- 7-30	10-10-30	10-10-30	18	3,000
10- 8-30	10-10-30	10-10-30	20	1,000
				$ 9,000
10-16-30	10-21-30	10-29-30	11	$200,000
				$200,000
10-28-30	10-30-30	10-30-30	11	$ 2,000
				$ 2,000
1-30-31	2- 6-31	2-13-31	1	$ 1,000
1-30-31	2- 6-31	2-13-31	6	1,000
1-30-31	2- 6-31	2-13-31	11	6,000
1-30-31	2- 6-31	2-13-31	12	1,000
1-30-31	2- 6-31	2-13-31	19	4,000
				$ 13,000
2-26-31	2-27-31	3-11-31	1	$ 3,000
				$ 3,000
Grand Total				$353,000

3-12-30—Confirmation $4,000, Dist. #1 and 2 Bonds—9-25-30 advice of call.

9-27-30—Check to us $10.00 profit on these bonds. Inasmuch, as bonds were not delivered to us the only entry on our records is the $10.00 entry.

PLAINTIFF'S EXHIBIT B-36.

Halsey, Stuart & Co.
Incorporated
Chicago, New York
and other principal cities

Telephone State 3900
201 South La Salle Street
Chicago, Illinois
May 23, 1930.

Mr. F. W. Hubbell,
Equitable Life Insurance Company,
Des Moines, Iowa.

Dear Mr. Hubbell:

We have now obtained the additional $15,000 Longview, Washington 6s which will complete the original $100,000 transaction involving the exchange of your State of Louisiana 5s due in 1931 for the above issue.

It is expected that these Longview bonds will be delivered to us within the next few days so that we shall be able to deliver them to you in Des Moines at that time. The transaction on these bonds can be handled in the same manner as was done on the $85,000 Longview which were shipped to you some days ago; namely, on receipt of our securities, we shall be pleased to have you ship the State of Louisiana bonds to us, our complete statements and check for balance being sent to you in adjustment.

Very truly yours,
(Sgd) Halsey Stuart & Co.
H. Holden Smith

HHS:HC

PLAINTIFF'S EXHIBIT B-37.

May 24, 1930.

Halsey, Stuart & Company
201 South La Salle Street,
Chicago, Illinois.

Gentlemen:

Your letter of May 23rd, advising that you have now obtained the additional $15,000 Longview, Wash. 6's, to complete the original $100,000 transaction involving the exchange of these bonds for a similar amount of State of Louisiana 5's, due in 1931 and held by this Company, has been duly received.

We note that these bonds will be delivered to you within the next few days, and it is entirely satisfactory for you to consummate the exchange of these bonds in the same manner as was done with the $85,000 exchanged last week.

Very truly yours,

FWH:RP *Vice Pres. & Treasurer.*

PLAINTIFF'S EXHIBIT B-38.

Halsey, Stuart & Co.
Incorporated

201 South La Salle Street
Telephone State 3900
Chicago, May 26, 1930.

Mr. F. W. Hubbell,
Equitable Life Insurance Co.,
Des Moines, Iowa.

Dear Mr. Hubbell:

In accordance with our previous correspondence, we are today confirming $15,000 Longview, Washington 6s as outlined more specifically on the formal confirmation being sent under separate cover. The securities are to be shipped direct to you, on receipt of which we shall appreciate your forwarding to us the $15,000 State of Louisiana 5s due in 1931, as outlined on the formal confirmation of purchase also being sent under separate cover.

Very truly yours,
(Sgd) Halsey Stuart & Co.
H. Holden Smith

HHS:HC

538

PLAINTIFF'S EXHIBIT B-39.

Halsey, Stuart & Co.
Incorporated

201 South La Salle Street
Telephone State 3900
Chicago, May 19 1930

Equitable Life Insurance Co.,
Des Moines, Iowa.
Attn: F. W. Hubbell

Gentlemen:

We are enclosing securities which we have sold to you in exchange for other securities which we have purchased from you as noted below:

SaleNTH73145 Longview Wash.	6s	11,075.19	
SaleNTH73146 Longview Wash Dist. No. 7s	6s	5,085.85	
SaleNTH73147 Longview Wash. Dist. No. 12	6s	13,197.21	
SaleNTH73150 Longview Wash Dist. No. 19	6s	46,927.88	
SaleNTH73148 Longview Wash Dist. No. 17	6s	8,126.67	
SaleNTH73149 Longview Wash Dist. No. 18	6s	2,011.67	86,424.47
Pur.NTH93066 Louisiana Highway	5s		86,258.94
Balance due us			165.53

You will note there is a balance due us of $165.53 for which we shall be pleased to receive your remittance.

We understand, on May 20th, you are shipping to us the 85,000 Louisiana Highway 5% bonds on receipt of the above securities.

It has been a pleasure to serve you in this manner.

Yours very truly,
(Sgd) Halsey Stuart & Co.

DS:EV RA

539

PLAINTIFF'S EXHIBIT B-40.

Halsey, Stuart & Co.
Incorporated
Chicago, New York
and other principal cities

Telephone State 3900
201 South La Salle Street
Chicago, Illinois
June 4, 1930

Mr. F. W. Hubbell, Vice President,
Equitable Life Insurance Company,
Des Moines, Iowa.

Dear Mr. Hubbell:

Referring to our previous correspondence and conversation relating to the Longview, Washington, 6's, we will be glad to undertake the purchase of $100,000 additional bonds of this issue, as it is possible to pick them up in the market. It would be our suggestion that we confirm to you in blocks of ten or more, as they are acquired. While the price of par cannot be absolutely guaranteed, yet that figure could be placed as the limit at which you would buy.

There have recently been some rumors to the effect that certain railroads operating in the northwest might purchase from the Long Bell Lumber Company the Longview, Portland and Northern Railroad. Tracks of this railroad are already being jointly used by the Great Northern, Northern Pacific and Oregon and Washington Lines, this privilege having been authorized by the Interstate Commerce Commission over one year ago. This rather emphasizes not only the importance of this particular asset of the Long Bell Lumber Company, but also the importance of Longview, Washington, itself.

This rumor is totally unofficial, but has been carried in one or two financial papers in the East within the last thirty days. Regardless of whether this does or does not take place, the reflection of Longview, Washington, cannot be other than favorable.

Incidentally, I think you might be interested in knowing that within the past few days they have undertaken the retirement of a very substantial amount of Long Bell Lumber Company Mortgage Bonds from funds which became available from the sale of capital assets not necessary to the successful operation of this Company.

After you have given due consideration to the above idea, Mr. Kelley will be glad to get in touch with you and en-

deavor to work out any arrangement which you might desire.

Very truly yours,
(Sgd) Halsey Stuart & Co.
FAW:HH Frank Wood

PLAINTIFF'S EXHIBIT B-41.

Mr. Frank Wood, June 7, 1930.
c/o Halsey, Stuart & Co.,
201 South LaSalle Street,
Chicago, Illinois.

Dear Mr. Wood:

I brought before the Finance Committee at its meeting Friday your suggestion that we purchase $100,000 additional Longview, Washington 6's.

After giving the matter our careful consideration, we came to the conclusion that the volume of these bonds that we now hold is about all that we should take at this time. I so notified Mr. Kelly and told him that possibly sometime in the future we might change our minds.

With kind regards,

Very truly yours,
FWH:BL *Vice President & Treasurer*

PLAINTIFF'S EXHIBIT B-42.

Halsey, Stuart & Co.
Incorporated
505 Fifth Avenue
Telephone Walnut 3811
Des Moines, Iowa August 9, 1930.

Mr. F. W. Hubbell, Vice-President,
Equitable Life Insurance Co. of Iowa,
Des Moines, Iowa.

Dear Mr. Hubbell:

In accordance with our telephone conversation yesterday, we are holding under option $15,000 Longview, Washington 6's for your consideration on Tuesday of next week. Our offering price is 100 less 1/4 discount to yield slightly better than 6%.

The fact that these are the first Longview bonds that we have had an opportunity to pick up since we confirmed $100,000 of the same issue to your institution May 17th, is indicative of how closely this issue is held. My under-

standing is that you will call me before Tuesday noon to let me know your decision.

Yours very truly,

BCK/LG (Sgd) B. C. Kelley

PLAINTIFF'S EXHIBIT B-43.

Halsey, Stuart & Co.
Incorporated
505 Fifth Avenue
Telephone Walnut 3811
Des Moines, Iowa August 19, 1930.

Mr. Henry S. Nollen, President,
Equitable Life Insurance Company of Iowa,
Des Moines, Iowa.

Dear Mr. Nollen:

We have acquired an additional block of $10,000 Longview, Washington 6's which we will offer at 100 less 1/4. You will remember that your institution now holds $115,000 of this same issue purchased from us recently.

Yours very truly,
Halsey, Stuart & Co.
BCK/LG By (Sgd) B. C. Kelley

PLAINTIFF'S EXHIBIT B-44.

Chicago Office
September 25, 1930.

Mr. B. C. Kelley
Chicago Office.

A day or two ago I sent you a notice that the Equitable Life Insurance Company had some Longview, Wash. 6s called. These were Nos. 207 to 212 inclusive, for a total of $6,000. Today, I am advised that among some of the undelivered Longviews which we are carrying on a "Will Advise" ticket for the Equitable, an addifional $4,000 have been called. These bonds were District #2 due 9/25/37 50%, Bond Nos. 107 to 110 inclusive. These are on a confirmation to the Equitable at 100 less 1/4, and are called at 100 so that we can buy them back at that price immediately.

We have available $5,000 Longview 6s, District #11 100% due 5/27/38 at 100 less 1/4, Shall we confirm this entire block and put it on a "Will Advise" ticket with the others which we are holding? Advise promptly.

HHS:HC HHS

PLAINTIFF'S EXHIBIT B-45

Halsey, Stuart & Co.
Incorporated

Chicago, New York
And Other Principal Cities

Customer's Confirmation

201 South La Salle Street
Telephone State 3900
Chicago

This sale has been confirmed by The General Office at Chicago, Ill.

Date 10/16/30 Conf. No. Sale 85584

Salesman Kelley -A

(Stamp of) Mailing Dept. 7:30 Oct. 18, 1930

Equitable Life Ins. Co. of Iowa
Des Moines, Iowa.

Attn. F. W. Hubbell, V. P.

Principal	199,500.00
Interest from 5/27 to 10/21	4,800.00
Am't due us	204,300.00
Days Extra Interest	
Total due us	

M

We Confirm SALE TO you of securities described below, subject to the following instructions:

Par Value	Name of Issue	Rate	Maturity	Interest Dates Or Dated	Price
200,000	Local Imp. Dist. No. 11 Longview, Wash.	6%	5/27/38	M&N 27	99.75

Pieces $1000 Denom. 200 Pieces $500 Denom. Pieces $100 Denom.

Instructions: Sold for remittance in Chicago Exchange to reach us not later than date to which interest is figured in above statement. In case of delay, additional interest will be added to amount due us. Kindly make adjustment, if necessary, in remitting.

Delivery Date 10/18/30 See Sale No. See Purchase No. Chgo. Tax Warr.

Securities to be Shipped direct to You on above Date.

42M—50% 50M—60% 50M—70% 58M—80%.

100.00 less 1/4% O. K. D.E.K.

This business is appreciated and we thank you for it.

Halsey, Stuart & Co., Inc.

DO

PLAINTIFF'S EXHIBIT B-46

Halsey, Stuart & Co.
Incorporated

Chicago, New York
And Other Principal Cities

Customer's Statement
201 South La Salle Street
Telephone State 3900
Chicago

10/16/30
Date of Confirmation

This purchase has been confirmed by The General Office at Chicago, Ill.

Conf. No. Purchase 3337

Salesman Kelley

Equitable Life Ins. Co. of Iowa
Des Moines, Iowa

Attn. F. W. Hubbell, V. P.

Statement

Principal	200,750.00
Interest to from 4/ 1/29 10/21/30	18,666.66
Am't Due You	219,416.66
Days Extra Interest	
Total Due You	

M

Invoice of PURCHASE FROM you of securities described below, subject to the following Instructions:

Par Value	Name of Issue	Rate	Maturity	Interest Dates or Dated	Price
200,000	Tax Antic. Warrants, City of Chicago.	6%		4/1/29	100,375

Pieces $1000 Denom. 2 @ 50,000 Pieces $500 Denom. 2 @ 25,000
Pieces 100 Denom.. . 5 @ 10,000

Instructions:

Delivery Date See Sales No. Longview Wash. See Purchase No.

Issued for General Corporate Purposes Anticipating 1929 Tax Levy.

Understand you are Shipping Securities to Us. Purchased in Trade for other Securities. Check for Balance due you to be Mailed.

Retain this Statement for Income Tax Purposes.

DO

PLAINTIFF'S EXHIBIT B-47.

Halsey, Stuart & Co.
Incorporated
Chicago, New York
and other principal cities

Telephone State 3900
201 South La Salle Street
Chicago, Illinois
February 27, 1931.

Equitable Life Insurance Company,
Des Moines, Iowa.

Attention: A. F. Popple.

Gentlemen:

Under separate cover today, we are forwarding $3,000 City of Longview, Washington, Local Improvement 6% Bonds (District Nos. 1 and 2—80%), due September 25, 1937. These bonds are numbered from M-337 to 339, inclusive.

In line with your arrangement with Mr. Kelley, you may forward to us, upon receipt of these bonds, $2,000 par value Longview, Washington, 6's of the 100% classification. We are to purchase these bonds in exchange for the 80% securities which we are forwarding to you. Definite statements covering the transaction will then be drawn up and the accrued interest adjusted one way or the other.

According to Mr. Kelley's original instructions, this transaction was to involve $8,000 par value of these securities instead of $3,000. However, we are unable to confirm more than $3,000 at this time, due to the fact that the remainder of our bonds of this issue have been sold.

Very truly yours,
(Sgd) Halsey Stuart & Co.

DBR:EA DBR

PLAINTIFF'S EXHIBIT B-48.

To the Bondholders of
The Long-Bell Lumber Company:

When we executed the First Mortgage securing the bonds which you hold of our Company, it was inconceivable that we would ever experience a world-wide economic upheaval of the far-reaching effect of the present depression, or of such long duration. It has disappointed calculations of many of the best business concerns of the country, making it impossible for them to meet their ob-

ligations even though unusual care has been exercised in creating such obligations.

The business of this company was founded in 1875. It has grown during the past fifty-six years, very largely out of earnings, to a corporation which, with its various subsidiaries, has assets of approximately $85,000,000. During this period, we have successfully passed through the various panics the country has suffered. We have borrowed large sums of money, not only in the form of unsecured bank credit but also in the form of bond issues. All of these obligations, both as to principal and interest, have been promptly paid as agreed; but we are now confronted with the possibility of a default in interest on our bonds.

This circumstance is due entirely to the unusual, if not unprecedented, severity of the present depression. We have seen constantly declining prices of lumber and diminished volume of sales, making it necessary for us to run our mills at considerably less than capacity because of the inability to find a market for the amount of lumber our mills were built to produce. The market price finally has reached a point so low that after paying the other costs of manufacture, there is nothing left out of the sale of the lumber to apply even on the cost of the timber consumed or for the use of the plants.

The inherent strength of the company was such, however, that notwithstanding these adverse conditions it has been able to continue to carry on, meeting its obligations on its bonds as they became due. The same management, supplemented from time to time with necessary additions, which conceived and organized this company and directed its operation during its years of healthy and prosperous growth is still in charge. As showing you some of the things which have been accomplished notwithstanding the times in which we were working, I call attention to the following: In November, 1930, we succeeded in selling capital assets for $3,500,000, the proceeds of which sale to the extent the property was covered by our mortgage were, of course, applied to the reduction of our bonded indebtedness, the maximum certified amount of which was originally $28,000,000. By this and other payments the amount of our First Mortgage Bonds has now been reduced to approximately $20,200,000. In November of this year, a wholly owned subsidiary succeeded in selling a railroad in the state of Washington for $4,250,000, the proceeds of which sale were used, as far as necessary, to call and retire an issue of secured gold

notes of $3,250,000, which became due December 1, last; the remaining proceeds from the sale were used for general corporate purposes. Both of these properties were sold for cash and at cost to us. In the case of both of these sales, contracts were entered into simultaneously with the purchasers giving us the right to the use of the facilities sold upon such terms that the operating efficiency of the properties of the company was not impaired in the least by such sales or the cost of manufacture increased. We have three times reduced salaries and made eliminations and have reduced wages. No dividends have been paid since 1927.

When we issued our bonds, according to our calculations, it was not going to be necessary for us to borrow money of banks, except possibly at some very temporary periods, but the depression has rendered it impossible to carry out this program and we were compelled to go into our banks for a considerable amount of money, totalling at the peak last year some $5,400,000. In the fall of 1930, because of the increasing severity of the depression and the absence of any outlook as to improvement, we found it necessary, in order to obtain additional bank credit, to create a separate corporation, the stock of which would be wholly owned by The Long-Bell Lumber Company, and assigned to that corporation certain unencumbered assets not otherwise pledged. The borrowings from the banks since then have been through this newly organized company. We retained entire ownership of its capital stock in order that all assets not used in the payment of the debts assumed by the new corporation, which included the bank debt, would revert to The Long-Bell Lumber Company. This bank indebtedness has now been reduced to $4,374,000.

The company has large and valuable properties, including certain non-operating assets which could be sold without detriment to the business, and the only reason it is confronted with the possibility of default on its bonds is the depression and nothing else. Conditions are such that it is almost impossible to sell anything at anywhere near a reasonable price. I have already stated that the price of lumber has dropped below the cost of production. You will see the impossibility of continuing to pay interest on the bonds as long as these conditions continue, and will appreciate that relief to some extent is necessary.

There are some eight or ten thousand bondholders. Believing that it is in the interests of the bondholders so

to do, we have suggested to Halsey, Stuart & Co., who headed the syndicate which distributed the bonds, that a bondholders' committee be formed to obtain deposits of the bonds, and provide in this way, for concerted and constructive action on the part of the bondholders in meeting the problem before them, cooperating with the company as far as possible. This committee is being formed and its personnel will be announced later. In due time you will receive a letter from the committee.

Please verify your name and address as it appears on the envelope in which this letter is enclosed and, if it is incorrect, report any change of name and address to us. There is nothing further necessary until you receive the Committee's letter, when we suggest that you consult the dealer from whom you purchased your bonds as to your action.

If there is any further information we can give you, we will cheerfully do so.

R. A. Long,
Chairman of the Board.

PLAINTIFF'S EXHIBIT NO. B-49.

Amount of Interest Received on Longview, Washington, Bonds

District	Amount
1	$12,720.00
6	180.00
7	600.00
11	85,530.00
12	7,200.00
17	1,996.50
18	1,650.00
19	20,070.67
20	390.17
Grand total	$130,337.34

Contribution to Bondholders Protective Committee

10-17-38	$ 29.72	
12-16-38	234.77	
1-27-39	30.00	
3-7-39	51.08	
		345.57
Net amount rec'd		$129,991.77

PLAINTIFF'S EXHIBIT NO. B-54.

New York Office
March 21, 1930.

Mr. R. E. Simond
Chicago Office

Dear Bob:

I wired you a few days ago relative to Mr. Barney Baruch wanting a bid from us on $200,000 Longview Bonds. Before giving the bid to Mr. Baruch we discussed the question with Mr. H. L. Stuart, and, at his suggestion, we gave Mr. Baruch a bid of 90 for the bonds. Since that time some other requests have come from dealers and we thought quite possibly Mr. Baruch might be attempting to pass the bonds on to us through the medium of other houses. We are consequently dropping our bid to 90 on all blocks of Longviews for the time being, excepting in such instances where we would be assured as to the source of the bonds. Please be on your guard lest some of these requests for bids come to you from houses in Chicago who might be acting as brokers for Mr. Baruch here or for dealers here trying to handle his bonds.

I was not familiar with the circumstances of the case when I originally wired you but I understand that in 1927 Mr. Baruch purchased from us $250,000 par value Union Bag & Paper Power Co. 6% Bonds and refused to take them up when the time came, so there is no advantage, of course, in our paying up for the privilege of taking care of his bonds.

Yours very truly,

B. J. L.

BJL:EL

PLAINTIFF'S EXHIBIT NO. B-55.

Chicago Office
May 13, 1930.

Mr. B. C. Kelley,
Chicago Office.

Herewith are copies of the Washington Law covering issues of special improvements. This was completed too late for me to write a detailed letter to Hubbell, so I am sending it along to you for delivery. You might tell

Hubbell that we did not have time to proof-read this copy and therefore we cannot guarantee the complete accuracy; but I presume the failure to dot an "i" or cross a "t" will make little difference.

The balance sheet of the Long Bell Lumber Company you may give him, but the other data enclosed in the brown envelope must be returned, as it is a part of our files. The present population of Longview is 15,000.

I think this covers all of the points Hubbell brought up, and after you have looked over some of the data enclosed, you will be in a position to answer any questions he might bring up, as well as launch an aggressive sales conversation.

We actually have $87,000 today, but I think there is a reasonably good chance of our immediately buying enough to round out a block of $100,000. You can tell Hubbell that in addition to that we will be glad to work on a block of $200,000 or $300,000, if he will give us plenty of time to get them in. I would say that we could offer them $85,000 firm, with a very good assurance of taking care of the additional $15,000 in a very short time.

We are just advised that District No. 11 called $91,000 of their bonds today for payment May 27. This might be of interest to Hubbell.

I hope you get something under way with them and close up the deal in short order. Certainly these specials compare most favorably with anything they have owned for a number of years and are still buying.

FAW:HH

PLAINTIFF'S EXHIBIT NO. B-56.

Memorandum.

November 11, 1931.

Mr. F. W. Hubbell:

A careful check of the correspondence and offering sheet of Halsey, Stuart in regard to the Local Improvement District Bonds of Longview, Washington, fails to disclose any misstatements on their part. There is, however, a general lack of information which would have been valuable for us to have before buying the bonds. For example, we were not informed about the three hundred and one lots which were sold with assessments paid by the Long Bell Lumber Company or its subsidiary, nor

were we informed about the large amount of property which the Long Bell people must pay taxes on.

There is one letter from Mr. B. C. Kelley, under date of January 16, 1931, which closes with the following sentence "Approximately forty per cent of the bonds of District #11 have already been paid, and a substantial additional amount will be retired in May." This direct statement by their representative is all the more proof that by failing to pay the bonds this May as they were accustomed to doing, was bad faith on the part of the Town, or in other words, bad faith on the part of the Long Bell Lumber Company. It is very probable that Mr. Kelley is merely quoting information in his letter that he received from his head office, and they doubtless did not anticipate that the Long Bell Company would elect to not pay their assessments on District #11 this year.

Our situation here is rather peculiar. We own bonds in a municipality that appears to be very poor. However, there is no delay so far in the payment of interest, and the offering circular clearly states that the bonds are "Due on or before twelve years from date."

In reading all their correspondence and the offering circular, one is led to believe without seeing it directly in print that the Long Bell Plant and the Weyerhaeuser Plant are in the City limits. This, of course, is not the case, nor do they directly say this.

I think our chief criticism of Halsey, Stuart should be based on the following points:

1. That these securities at no time were proper investments for an insurance company with all the facts considered.

2. That to trade an insurance company out of the bonds of a full sovereign state, and put them into small town special assessment bonds regardless of the guarantee, is an unwise practice.

3. That we were led to believe and expect that certain bonds would be called on certain dates in a definite schedule, regardless of what the maturity of the bonds were.

4. That we were led to believe that the large mills of both the lumber companies were in the City limits, and therefore taxable for the Local Improvement Districts, or at least some of them.

5. That at the time we bought these bonds, Halsey, Stuart was in a position to know that the Long Bell Lumber Company was not in a good financial condition and therefore their guarantee was not good.

6. That had we known that the Long Bell Lumber Company owned such a majority of the taxable property we would have realized that their guarantee was meaningless, as for example, a man endorsing his own note does not increase its value.

James H. Windsor.

JHW:JR

PLAINTIFF'S EXHIBIT NO. B-57.

Halsey, Stuart & Co.

Private Wire

Subject .....
No. ..... Date .....
To .....
Return
Destroy
Attention of

Nov 20 1926

53ge j Phila Nov 19 26
Simond

No information in our files relative to area and population of Longview Washn Districts Where can this be obtained

Brown 403pm

Of districts we've handled all relatively small in area and pop—though we haven't exact data—Having handled them solely on L. B. guarantee we were not concerned—Dist #11 is the Sewer dist. formed to complete sewer construction begun by city & takes in most of city—

V.

PLAINTIFF'S EXHIBIT NO. B-58.

Letterhead Halsey, Stuart & Co.

July 20, 1933.

Dear Mr. Hubbell:

We appreciated your telephone message this morning to the effect that if the type of reorganization which we are working on for The Long Bell Lumber Company is carried through you are willing to forget Long-Bell's guarantee of the payment of principal and interest on the

Longview, Washington Local Improvement District Bonds which you hold, providing some such plan as we discussed in Des Moines relative to the matter could be made effective. It is my recollection that the type of plan we discussed and which grew out of suggestions made by you and other bondholders with whom we have discussed the situation is as follows:

1. In connection with the reorganization of the Lumber Company a preferred stock issue will be created in the amount of the par value and unpaid interest of the Longview, Washington Local Improvement District Bonds and Cowlitz County Consolidated Diking Improvement District No. 1 Bonds as extended, the payment of the principal and interest on the original issues of which were guaranteed by The Long-Bell Lumber Company and which are at present outstanding in the aggregate par amount of approximately $4,000,000, exclusive of interest. This stock will be junior to the security which shall be given in the reorganization to the present first mortgage bondholders, but senior to the security which shall be given to the present stockholders.

2. This stock to be deposited with a trustee as collateral to the new bonds. As a practical matter there should probably be a separate trustee for the Local Improvement District Bonds and one for the Diking District Bonds. When and if the bonds have been paid in full as to principal and interest, the stock will be released, returned to the company, and cancelled. If, however, the new bonds defaulted and the default was not cured within a reasonable period, the stock would be liquidated and its proceeds applied towards the curing of the default, or, if this did not seem practical or possible of accomplishment, the stock in that event would be reduced to ownership and delivered to the individual bondholders in the proportion of their respective holdings.

3. In lieu of the creation of this issue of preferred stock and its deposit with a trustee as indicated above, present holders of these bonds will unconditionally waive and relieve The Long-Bell Lumber Company of its guarantee to pay the principal and interest on their bonds.

4. In addition to waiving the guarantee, the holders of these bonds in their own interest should consider an extension of the maturity of the bonds and a revision of interest rates made necessary by such extension and the respective districts' inability to pay interest at the present rate of tax collection. In connection with this change in interest rates and maturities, the respective districts

would undoubtedly have to consider a respreading of their former assessments, thus passing on to the respective tax payers the relief provided for them through such extension of maturity and revision of interest rates.

5. All future collection of taxes applicable to the payment of interest and principal on these bonds will be segregated in the hands of a corporate trustee into two distinct funds, the proceeds in one to be used solely for the payment of principal and the proceeds in the other to be used solely for the payment of interest.

6. As funds accumulated in the principal fund, bonds would be called and retired in their numerical order much in the same manner as heretofore followed, unless some one has a better method to suggest, or, if proper details can be worked out to bring about the procedure in a practical manner, such funds might be used to retire bonds by tender or through their purchase in the open market, providing they could be so acquired below their par value.

7. In connection with the payment of interest, it would seem advisable to make a sufficient reduction in the rate for the next few years to bring the aggregate figure paid within the amount of taxes collected for that purpose so that the new bonds would not immediately be placed in default. The return of that portion of the interest thus lost through the reduction of the rate of interest, which might be possible in view of the ultimate aggregate amount of interest funds available, could be accomplished through increasing the rate in later years.

8. It is conceivable that under the plan outlined above all bonds in some specific district might be retired and funds still be left either in the principal or interest fund to be created. In such event, funds so remaining unused should be returned to the district to which they are applicable.

9. The presentation of the plan, once agreed upon, to the respective bondholders could be accomplished either through the formation of a bondholders' committee composed entirely of bondholders and directed by them through their own secretary, or through the selection of some organization capable of handling the matter who would contact with individual bondholders, and, after agreement upon a plan of reorganization and procedure with them through using their names and endorsement of such a plan, pass it on to the other bondholders

in an endeavor to obtain the necessary approvals and consents.

Will you please advise me whether or not the above is in accordance with your ideas of the proper plan in this connection, and in so doing feel free to make any suggestions that occur to you in the way or changes or additions to the points which we have covered.

Very truly yours,

C. T. MacNeille,

ZO

Mr. F. W. Hubbell, Vice President and Treasurer,
Equitable Life Insurance Company of Iowa,
Des Moines, Iowa.

PLAINTIFF'S EXHIBIT B-59.

Halsey, Stuart & Co.
Incorporated
Chicago, New York
And other Principal Cities

Telephone State 3900
201 South LaSalle Street
Chicago, Illinois
June 4, 1934

Messrs. F. W. Hubbell, Vice-President and Treasurer,
Equitable Life Insurance Company of Iowa,
Des Moines, Iowa.
N. P. Delander, Vice-President,
First National Bank,
St. Paul, Minnesota.

Copy for Mr. Hubbell
(CC/ Messrs. Nelson, Tennant,
Demsey, Combs and Andrews of
Long-Bell and Mr. Simond of
H. S. & Co.)

Gentlemen:

Complying with your request, as expressed during our meetings with Long-Bell officials in Kansas City on May 31 and June 1 last, at which the following gentlemen were intermittently present: Messrs. Hubbell and Delander; Mr. Henry, as counsel of the Equitable Life Insurance Company; Messrs. Nelson, Tennant, Demsey, Combs, Hay and Andrews of Long-Bell; and Messrs. Simond and MacNeille of Halsey, Stuart & Co., we desire to advise you as follows:

1. The efforts of the Long-Bell officials and the Reorganization Manager have to date resulted in either the outright cancellation or in an agreement providing for cancellation which is being reduced to writing, or a commit-

ment to cancel when other phases of the reorganization have been completed of contracts aggregating a total of $13,441,000 of liabilities as follows:

Obligations Disposed of

Weyerhaeuser—cancelled	$11,584,000.00
Milwaukee Land Company, subject to action by Trustee	549,000.00
Peavy-Moore and Peavy-Byrnes Lumber Companies—agreement to cancel	140,000.00
Southern Pacific Company interests—agreement to release liens against a valuable logging railroad and block of timber, and accept securities of same class as those which may go to first mortgage bondholders	1,168,000.00

2. In addition to the above cancellation of liabilities, negotiations have been under way for some time looking to the removal of burdensome obligations on the part of Long-Bell in certain operating contracts, namely, Washington Gas and Electric Company, The Longview Fibre Company and M & M Plywood Company, and from the consideration which has so far been given these matters and conferences which have been held, we have no reason to believe that such burdensome features will not be removed and modified contracts agreed upon in due course. In the meantime Long-Bell has paid each of these companies in full to date, and no liability exists under present contracts except as to future obligations, and it is as to these that a modification is sought; also except that there is a note of $122,000 due the North American Gas and Electric Company and some question regarding excess fuel costs, both of which it is hoped will be disposed of in connection with settlement of the Washington Gas and Electric Company contract.

3. In addition to the items listed above, there are certain obligations of Long-Bell on which agreement has not yet been reached, as follows:

Obligations Not Disposed of

Red River Lumber Company (Walker timber)	$1,461,000.00
Dowling Notes (timber purchase)	3,800.00
Joint track rental (4 trunk lines)	53,400.00
Guarantee as to principal and interest on Diking District and Local Improvement District Bonds aggregating a total par value of	3,958,500.00

4. Attached is a copy of Outline of Permanent Plan of Reorganization for The Long-Bell Lumber Company and Long-Bell Lumber Sales Corporation submitted by Halsey, Stuart & Co., dated March 30, 1933, which has been tentatively agreed to in principle by the creditor banks. It has not been approved by the First Mortgage Bondholders' Committee, nor have they been requested to approve it. Proposed treatment of the bank debt and of the first mortgage bonds as outlined in this plan is that which has so far met with more favor than any other proposal, except that certain First Mortgage bondholder interests have suggested that in place of a preferred stock that the bondholder be given an income or debenture bond, so that he will hold a bond rather than a stock in the reorganized company.

5. You will note that in this plan it was indicated that the guarantee of The Long-Bell Lumber Company, as to principal and interest, and which is endorsed on each individual bond of nineteen issues of Local Improvement District bonds aggregating a par value of $1,620,000 now outstanding, dated September 25, 1925, and subsequently to February 5, 1927, and maturing twelve years from date, and an issue of $2,338,500 par value of Diking District Bonds now outstanding, dated June 1, 1925, and maturing January 1, 1943, would be cancelled. As a result of our discussions with you and other interested Local Improvement District and Diking District bond interests, it has appeared that such bondholders would be unwilling to relieve Long-Bell of their guarantee without receiving something else in place thereof.

The first suggestion considered to meet this attitude was that in place of Long-Bell's guarantee, a warrant should be attached to the bonds calling for a specific amount of securities in the reorganized company junior to those to be given to the banks and the First Mortgage bondholders, but senior to those now held by equity owners. This suggestion not meeting with particular favor, further consideration was given to the matter, and Mr. Andrews offered the suggestion that upon the reorganization of The Long-Bell Lumber Company becoming effective, a wholly owned subsidiary of the reorganized company, owing such of the unsold real estate and improvements at Longview and the vicinity thereof as had been agreed upon, might give its guaranty in lieu of the guaranty of The Long-Bell Lumber Company. This wholly owned subsidiary might be either The Longview Company and the Longview Suburban Company, or a merger of the two companies, or a

newly created company, the property to be owned by the company or companies giving the guaranty to be determined later.

This suggestion seemed to present possibilities of developing a guarantee in lieu of the present one that would be acceptable to Diking District and Local Improvement District bondholders, and our discussions were continued in generalities with that in mind, with the result that the following tentative program was suggested as a preliminary start:

(a) The general feeling being expressed that the maturity of all bonds should be extended for a period of not less than 10 years and that the interest rate during the first five years should be reduced to say 2½% or 3% for the first three years and 3½% or 4% for the last two years in place of the present 5½% coupon on the Diking District Bonds and 6% coupon on the L. I. D. bonds, or an average rate for the five year period of between 2.9% and 3.4%. At the commencement of the sixth year, the rate would return to the original contract rate. It was suggested by Mr. Andrews that the best medium through which to bring about such extensions of maturities and reduction of interest rates would be through the new so-called Municipal Bankruptcy Bill, recently passed in Washington, and immediate consideration would be given to determine:

(1) To what extent, if any, the present laws of the State of Washington would permit the desired modification.

(2) If any legislation would be required, and, if so, to determine the requirements in order that they might be laid before the Legislature when it reconvened in January of 1935.

(3) To what extent the Municipal Bankruptcy Bill could be used, irrespective of State Legislation, and

(4) The proper procedure in coming under the Municipal Bankruptcy Bill should it be decided that it was the proper medium to use in bringing about all or a portion of the desired changes.

(b) The resumption of active sales efforts to dispose of unsold lands at and in the vicinity of Longview having been discussed, it was the unanimous opinion of those present that the time was ripe for the resumption of such sales activity and that immediate consideration should be given to formulating a definite sales policy, including a revision of sales prices, which would permit moving the property under present conditions, and Mr. Nelson assumed responsibility of carrying out this phase of the program, to which he had already given consideration.

(c) It was suggested that to the extent that any cash came into the Treasury of either The Longview Company or the Longview Suburban Company, that that cash should be retained in the Treasury of those respective companies in order that they might in that way start to build up a reserve which would enable them to help protect their assets as occasion might arise.

(d) It being recognized that an extension of the payment date of past due and future assessments on lands within the respective districts for say five years would facilitate the sale of those lands and the collection of such taxes, it was decided that consideration should be given to arranging for such extensions, and we have asked Mr. Andrews to undertake the necessary investigation along with his consideration of the Municipal Bankruptcy Bill.

6. As to the future management of Long-Bell, this is naturally a vitally important question to the Company's creditors; a question that has received consideration on many occasions during the past two and one-half years. All that we can say at this time is that the present management feels entirely capable of carrying on and are now in the midst of making various changes which it is believed will increase efficiency and reduce expense.

7. Before the writer left Kansas City on June 1, Mr. Hay had wired Longview asking for the information which we believe you desire, regarding the matter of assessments. Mr. Hay's wire read as follows:

"During meetings just completed following information required earliest possible date by representatives Local Improvement and Diking District bonds First amount assessment actually paid by all Long-Bell companies and separately amount paid all other interests by years commencing nineteen twenty-six and finishing with payments received through May thirty-first nineteen thirty-four separately as to each Local Improvement and Diking District Second total of assessments paid delinquencies as of May thirty-first nineteen thirty-four and unmatured assessments same date separately on each piece of property improved with building owned by all Long-Bell companies in each district Stop Rush six copies to Demsey to reach him June sixth Stop If impossible comply with the above wire Demsey immediately"

In reply, Mr. Demsey received the following wire:

"Do not believe can mail information Hays wire this date before June eighth Will do better if can"

From this reply you will note that it will not be physically possible to get the information which is coming

from Longview in your hands in time for you to consider it and give us the benefit of your conclusion by June 9. We therefore hope that you will be able to give us your preliminary reaction to the general proposal prior to receipt of this information, in order that we may be able to make a definite statement regarding our efforts to date when meeting with the Company's creditor banks in New York on or about June 11 next.

8. There is another phase of this situation which was not discussed in open meeting, but which was mentioned by the writer to certain of those present and that has to do with the letter of Mr. Alex Hay, Tax Agent of The Long-Bell Lumber Company, addressed to Halsey, Stuart & Co. under date of May 24 last. This letter has to do with the payment of interest on the Local Improvement District Bonds and in part reads as follows:

"The City Treasurer advised me this morning that on such Districts as she had already made partial payment of the interest she would continue to send in the monies received until one year's interest had been paid, and that following and on all bonds where she had not made a partial payment, her plans in the future would be to hold all monies received on hand until a sufficient amount had accumulated to call an interest coupon on all of the outstanding bonds."

In connection with this statement of the City Treasurer's proposed action, it occurs to us that consideration should be given to whether or not such funds should be accumulated in the hands of the City Treasurer or should be deposited in the hands of a corporate trustee, it being our idea that once default has occurred in these bonds that if legally possible and the cooperation of the city's officials can be obtained to that extent, all funds should be held by a responsible corporate depositary for the benefit of all bondholders as their interests may appear.

We assure you that the Long-Bell officials and ourselves are ready to supply you with any additional information which you may wish, and that we appreciate the spirit of cooperation which you have so far evidenced.

Yours very truly,

Halsey, Stuart & Co.,

Reorganization Manager.

CTM ZO

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Outline of

Permanent Plan of Reorganization

for

The Long-Bell Lumber Company

and

Long-Bell Lumber Sales Corporation

1. All obligations of the Company and Corporation except bank loans will be cancelled or modified so that no liability remains for non-performance.

2. The Sales Corporation shall be dissolved, its assets returned to the Lumber Company, and its bank loans funded into Ten-Year Income Notes of the Lumber Company callable at par and accrued interest and bearing cumulative interest after the first two years at the rate of 3% for the third year, 4% for the fourth year, and 5% thereafter. These Notes will contain appropriate provisions against placing any mortgage on the Company's properties except with the approval of three-fourths of the Notes then outstanding.

3. First Mortgage Bonds will be exchanged for 6% Preferred Stock of equal par value; bearing cumulative dividends from date of last bond coupon paid, plus one share of Common Stock for each share of Preferred, the Common so issued to represent 50% of the Company's total Common Stock. Both Preferred and Common Stock will vote. All stock shall be placed in a voting trust for five years, to be voted by five trustees, three of whom shall represent the former bondholders.

The Preferred Stock will contain appropriate provisions,

a) Against placing any mortgage on the Company's properties, or issuing any stock senior to or on a parity with the Preferred Stock, except with the approval of three-fourths of the Preferred Stock then outstanding.

b) Against any declaration of dividends on Common Stock until all dividends on Preferred Stock have been paid and an amount at least sufficient to pay one year's additional dividends on Preferred Stock has been reserved for that purpose.

c) Giving the Company the right, after retirement of Notes, to convert the Preferred Stock into unsecured obligations of the Company with like provisions as those pertaining to the Preferred Stock.

4. Surplus earnings and proceeds from sale of capital assets will be placed in a sinking fund for retirement of Ten-Year Notes, redemption of Preferred Stock and payment of dividends thereon in proportions to be determined.

5. Local Improvement and Diking District Bonds will waive the guarantee of The Long-Bell Lumber Company.

6. Reorganization Managers will be appointed by The Long-Bell Lumber Company to carry out the above plan.

7. The plan will not become operative until approved by all classes of creditors and stockholders and until in the judgment of Reorganization Managers it can be made effective.

8. Pending declaration of the effectiveness of the plan the present status of each class of security will remain unchanged, except that the Sales Corporation shall agree for a limited time and in a limited amount to release sufficient cash, after every other means of conserving and realizing cash has been exhausted, to allow the Company to continue as a going concern.

9. When and if Reorganization Managers decide that the plan can be made effective they will evolve a method of making an equitable disposition of non-assenters, if any, through bankruptcy proceedings, foreclosures, or otherwise.

10. All expenses incident to the plan, including expenses of the First Mortgage Bondholders' Committee, will be paid by the Lumber Company.

11. Reorganization Managers' compensation will be determined after the plan has been declared operative or abandoned, on the basis of services performed and results accomplished. In case of disagreement as to amount of compensation the matter shall be referred to arbitration.

Respectfully submitted at the request of the
Chairman of the Bondholders' Committee.
Halsey, Stuart & Co.

March 30, 1933.

562

PLAINTIFF'S EXHIBIT B-60.

(Letterhead of Halsey, Stuart & Co.)

July 19, 1934.

Dear Fred:

The enclosures speak for themselves. If, as you intended, you see me in Chicago shortly I hope that we can go over the memorandum together. If not, then I hope you will find it convenient to write me your reactions and pass a copy on to Mr. Delander in order that he may have the benefit of them before reaching a conclusion with his associates.

It is unfortunate that figures on the L. I. D.s such as those enclosed for the D. D.s are not ready. They are being prepared from the Treasurer's books and should be ready before the end of the month. The expressions made now will, of course, be subject to revision when these figures are ready.

Yours very truly,

C. T. MacNeille

CTM ZO

Mr. F. W. Hubbell, ZO
Vice President and Treasurer,
Equitable Life Insurance Company of Iowa,
Des Moines, Iowa

cc/ Mr. Jesse Andrews
Mr. N. P. Delander

Copy for Mr. Hubbell.

July 19, 1934

Dear Mr. Andrews:

It has seemed to me, as I stated at Longview, that if we all continue to think out loud, so to speak, with the understanding that such thoughts are neither commitments nor final conclusions, we will reach a fair plan for the L.I.D. and D.D. bonds much quicker than in any other way. The matter is by no means a simple one and we need every single thought that we can get, even if on its face it may not seem to fit.

I am sending copies of this letter to those indicated below, and I suggest that Long-Bell officials clear their ideas through you and the others through me. I would

like to have the benefit of all reactions to my memorandum at the earliest convenient date and before you and I meet in Chicago as contemplated. In view of the task ahead of us and the very limited time at our disposal, I hope that everyone will reply promptly and frankly.

The fundamental question which I asked you in Longview and which remains unanswered is,—What is the maximum amount of cash you believe the Longview and Suburban Companies can contribute each year 1934 to 1938, inclusive, to the payment of taxes and assessments, what will be its source, income or sale of capital assets, and what reasonable assurance have you that your belief will be realized? The answer to this question, if there be one, and there must be one if our plan is to be sound and the two companies allowed to live, at least until it has been fairly demonstrated to what extent the original conception at Longview was justified, must be constantly before us all while studying this matter. I therefore hope that in replying to my memorandum, touched upon below, that Long-Bell will attempt to answer this question. In view of the times, I urge that their answer be based on conservatism rather than optimism.

On the trip home I devoted my time primarily to summing up the information and reactions I gathered at Longview and compared my conclusions with those previously reached in regard to the Lumber Company's guarantee of the L. I. D. and D. D. bonds. As I went along I jotted down thoughts that might warrant consideration in setting up our plan. There still remain in my mind many unanswered questions that may have some bearing on our plan. These, too, I have jotted down as I went along, for without the reaction of those considering this matter to them I am doubtful as to our next step.

Enclosed is a copy of the memorandum referred to above. I apologize for its form, but it seemed best to get it before you all promptly rather than to take time to work it over into more presentable shape.

Enclosed to you, but not the others, are copies of letters which I have written to Messrs. Nelson, Hubbell and DeLander in order that you may know what else I have done at this end.

Yours very truly,
(Signed) C. T. MacNeille.

CTM ZO
564

Mr. Jesse Andrews,
R. A. Long Building,
Kansas City, Missouri.

CC/Messrs.
M. B. Nelson,
J. D. Tenant,
S. M. Morris,
R. T. Demsey,
R. P. Combs,
N. P. Delander,
F. W. Hubbell,
R. E. Simond,
K. M. Keefe.

Copy for Mr. Hubbell

July 19, 1934.

Dear Paul:

In view of our discussion on the train, the enclosures need no further explanation from me or comment from you at this time.

As I understand, it is your intention to prepare a report of your trip for your associates and then to meet and discuss it. You will also draw on your own organization for suggestions supplemental to your own conclusions. When this is done, you, Mr. Hubbell and I will get together and outline a tentative plan for presentation to Long-Bell.

I will then meet with Mr. Andrews and counsel to consider this tentative plan and will pass on to you and Mr. Hubbell the conclusions reached. Should there remain any feature of the plan on which all interests and counsel are not in accord, another meeting of all of us will be necessary and I hope that if such a meeting is required that you, Mr. Hubbell and Mr. Andrews can come prepared to speak authoritatively and finally for those you represent, in order that there may be no further delay in presenting the matter to bondholders.

Very truly yours,
(Signed) C. T. MacNeille

CTM ZO
565

Mr. N. P. Delander, Vice President,
First National Bank,
St. Paul, Minnesota.

CC/ Mr. Jesse Andrews
Mr. F. W. Hubbell

Memorandum

1. All delinquencies of principal and interest in D. D. assessments which became due in 1934 and prior thereto but no penalties might be funded to become due one-fifth each year 1941 to 1945, inclusive.

2. Maturity of D. D. Bonds might be extended, say seven years to 1950.

3. New bonds, guaranteed by Longview and Suburban Companies, might draw interest as follows:

Year	Interest Rate	Annual Principal Assessment
1935	0%	$ 255,302.79
6	0	255,302.79
7	0	255,302.79
8	2½	255,302.79
9	2½	255,302.79
40	3½	255,302.79
1	3½	191,296.63
2	4½	191,296.63
3	4½	191,296.63
4	5½	191,296.63
5	5½	191,296.63
Total	32%	$2,488,299.89

4. District Treasurer, as now, could annually add to the assessment for principal an additional levy to pay interest, commencing 1/1/38.

5. During calendar years 1935, 1936, and 1937, but not thereafter, assessments falling due during those years or in any other year, as to principal only, could be paid for in bonds at par flat, whether issue in default or not, except as to that portion requiring payment in cash for current operating and maintenance expense. Thereafter principal could be paid in bonds, but interest should be paid in cash.

6. Upon plan becoming operative Long-Bell Lumber Co. might deposit with a third institution say $25,000 in cash, and the Longview Co. and the Suburban Co. to-

gether might so deposit $75,000, those funds to be used to purchase, through tender or otherwise, D. D. Bonds at not over $....., first come first served. The bonds so acquired might be applied towards the payment of the 1935 and later year assessments of the respective companies. Any cash not used to be returned to the respective companies on, say, November 1, 1935.

7. Upon plan becoming operative the three companies might deposit with a third institution or pay direct to the County Treasurer their real estate taxes for 1934 and 1935 as follows:

Company	1934	1935
Long-Bell Lumber Co.	$ 49,035.62	$ 54,240.83
Longview Company	75,290.14	82,094.96
Suburban Company	26,385.35	28,759.87
Totals	$150,711.11	$165,095.66

8. These payments will require from the Longview Co. and the Suburban Co..... $287,530.32
but, assuming that bonds can be purchased as indicated, will pay all taxes and assessments in full for 1934 and 1935 to 1936. Assuming a minimum income from these two companies of 60% (remaining 40% reserved for L. I. D. Bonds) of $80,000 per year, we have..... 96,000.00

leaving a balance to be raised for the two years of $191,530.32
This must be given further study.

9. Requirements for second two years of L. and S. Companies:

	1936	1937
Taxes	$109,370.65	$107,886.47
Assessments	147,893.50	147,893.50
	$257,264.15	$255,779.97
If bonds obtainable at 50 or less, subtract	74,000.00	74,000.00
Balance	$183,264.15	$181,779.97

The possibility of raising this amount of money must also be given further study.

10. Above suggestions may have to be revised when requirements for L. I. D. Bonds and other Dike Districts and Kelso Districts are considered, and should it prove impossible to raise the necessary cash.

Matters Requiring Consideration.

1. Would it be feasible to reduce D. D. Bonds by, say, 50%, with corresponding reduction in assessments, and give bondholders obligation of Longview and Suburban Companies for amount so reduced? Such obligation to be on an income basis, with possibly other features that might not be worked into a municipal bond. This would relieve the annual burden of assessment payments and give the guarantors more leeway to work themselves out.

2. Some assurance must be given that general real estate taxes will be paid, for if property is sold for such taxes all L. I. D. assessments might be cancelled and all past due D. D. assessments might also be cancelled.

3. What amount of cash, if any, not applied on inter-company debt is with Sales Corp. or Lumber Co. belonging to Longview or Suburban Companies?

4. Upon completion of major reorganization, will Long-Bell have sufficient cash to loan L. and S. Companies all or any portion of funds required to make payments for taxes and assessments through 1937? Would it be advisable?

5. How can back taxes be used to best advantage by County Treasurer if Long-Bell pays up? Can a special deal be worked out to pay off warrants and bonds or otherwise to assure reduction in levies for future years?

6. Agree upon fair distribution of results of guarantee between L. I. D.s and D. D.s. Shall there be any preference? Shall all payments by L. and S. Companies be limited to tax and assessment payments and each separate district, some 25 in all, rely on its own receipts to meet its own obligations, irrespective of guarantee? In other words, assuming whole structure broke down and L. and S. Companies could not fulfill their entire guarantee, how should payments they do make be distributed?

7. Prepare list of bondholders showing owner, address, and par value. Apply this list to any plan to determine its practicability.

8. What does R. A. Long Estate propose to do in the way of maintaining taxes and assessments on its holdings at Longview?

9. Do. Lumber Co. holding include properties other than mill site, and, if so, what?

10. How can cash balance now with Treasurer be best used for bondholders? Could old or new bonds be tendered, thus using it for principal payments? If not, could it be retained, assuming all past due bond interest was

cancelled, and used for either principal or interest on new bonds to offset any delinquency in collection of assessments under new bonds? Should it be held and other funds added and used to pay 7/7/34 coupons on old bonds at full 5½% rate? Amount so required, $64,240, against balance on 7/10/34 of $45,737.

11. Long-Bell's share of total unpaid D. D. #1 assessments, delinquent and not due, is about.....85%
Of delinquent alone it is about.....95%
and of not due assessments it is.....78%

12. Present liability under Lumber Co. guarantee on D. D. #1 alone, assuming no payments made by others and assuming that $255,302.79 principal is retired each year—

1934	Interest	$ 128,480
5	Interest	114,438
6	Interest	100,396
7	Interest	86,354
8	Interest	72,312
40	Interest	58,270
1935/1940	Principal	2,336,000
		$2,896,250

13. Under 3 above the total liability might work out about as follows:

Year	Principal	Interest
1935	$ 255,302.79	$ 0.00
6	255,302.79	0.00
7	255,302.79	0.00
8	255,302.79	43,060.00
9	255,302.79	36,677.00
40	255,302.79	42,413.00
1	191,296.63	33,477.00
2	191,296.63	34,433.00
3	191,296.63	25,825.00
4	191,296.63	21,043.00
5	191,296.63	10,521.00
	$2,488,299.89	$247,449.00
	247,449.00	
	$2,735,748.89	
Saving over ½	160,501.11	
	$2,896,250.00	

Is this $160,501.00 a sufficient saving? Is it too much and should it be paid to bondholders in some form? Is it fair to reduce interest as indicated in 3 above, which is equivalent to about six years' interest at 5½%, the old rate? Are we proceeding on correct basis in assuming bonds should be paid in full?

14. In retirement of debt should preference be given to principal or interest? Would the bondholders' interests be best served if the L. and S. Companies were allowed or forced to liquidate and use proceeds to pay interest rather than principal? Is there enough property to assure payment of both in full?

15. What, if any, representation should bondholders have on boards, or otherwise, of L. and S. Companies, and under what conditions?

16. Would L. and S. Companies be justified in accepting bonds in lieu of cash in payment for land sales?

17. Should guaranty be enforced simply to the extent L. and S. Companies can make good and live, or should it be enforced regardless, even to the point of liquidation?

July 19, 1934.

PLAINTIFF'S EXHIBIT P-34.

Longview, Washington

Messers. Halsey-Stuart & Co., Inc.,
Chicago, Illinois

Gentlemen:

This will confirm our agreement made with your Mr. W. I. Sleep in Longview today with respect to the sale to you by us of approximately $1,250,000.00 par value of local improvement district bonds to be issued in the City of Longview under provisions of Chapter XXII of Remington's Compiled Statutes of Washington, 1922, or such part thereof as we receive as hereinafter stated.

The city council of Longview proposes to create seven local improvement districts numbered respectively 1, 2, 3, 4, 5, 6 and 7, to improve the streets in these districts by paving in some and paving and gravelling, or gravelling, in others, and laying sidewalks. The cost of the improvements as now estimated is approximately $1,250,000. In some of the districts proceedings have advanced to the point of having advertised for bids for the work, the bids to be received on or before May 12th. In the other

districts the work is not so far advanced, but it is expected to have the work begun in all of the districts this spring or summer and to have it completed by the middle or latter part of the fall. It is contemplated that the city when entering into a contract with a contractor for the work in a district either will enter into a contract with the contractor at the same time for the sale to the contractor at par of the bonds of the district in an amount sufficient to pay the cost of the improvement, or will contract with the contractor to pay him the cost of the improvement in such bonds, the bonds to be delivered as soon as they may be issued under the law and with the exercise of due diligence on the part of the city authorities. The rate of interest on the bonds is to be 6% per annum, they are to be payable at the fiscal agency of the State of Washington in the City of New York, and are to be otherwise in compliance with the laws of the State of Washington.

It is contemplated that we will give each of the contractors entering into such a contract with the city an option for fifteen days after the date of his contract with the city to enter into an agreement with us to sell us the entire issue of bonds which he may purchase under his contract aforesaid with the city for the purchase of such bonds, or which may be issued to him in payment of his contract price, this agreement with us if entered into by such contractor to fix the price which we shall pay for such bonds at 92% of par and accrued interest.

We agree that immediately upon the receipt of such bonds or any of them we will sell them to you and you agree to pay us for them at the rate of 94% of par and accrued interest. We agree to deliver such bonds to you at such place as you may designate against the payment of the price therefor. We agree furthermore to stamp or have endorsed upon such bonds a form of guaranty approved by the attorneys mentioned below by which we will unconditionally guarantee the payment of the principal and interest of said bonds.

This agreement for the purchase on your part of any of the bonds is conditioned upon our furnishing you the opinion of Messrs. Goodfellow, Bells, Moore & Orrick approving the validity of the bonds, and their due issuance in accordance with the laws of the State of Washington, and their opinion approving the form of guaranty, both with respect to its general scope and in particular with respect to preserving intact the tax exempt nature of the bonds.

If this letter correctly states the agreement please so indicate by signing in the place provided for your signature below and retain the copy of the letter which we hand you herewith.

The Long-Bell Lumber Company,
By R. Morris,
V. P.

The above correctly states our agreement:
Halsey-Stuart & Co. Inc.
By W. I. Sleep,
V. P.

572

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PLAINTIFF'S EXHIBIT P-35

REPORT ON LOCAL IMPROVEMENT DISTRICTS OF CITY OF LONGVIEW, WASHINGTON

(1) L.I.D.	(2) Purpose	(3) Bonds Issued	(4) Assessments on Prin. to date	(5) Amount yet to be assessed	(6) Bonds called to date	(7) Bonds yet to be called	(8) Percentage of 84 assess. levied against L.B.L.Co. and subsidiaries	(9) Use of Property	(10) Population of District	(11) Assessed valuation for ad valorem tax purposes: Land	(12) Improvements	(13) Total
No. 1	Street Paving	$ 426,815.81	$ 341,452.65	$ 85,363.16	$ 210,815.81	$ 216,000.00	52.86%	Residential	1,220	$ 213,147	$ 204,770	$ 417,917
2	" "	235,133.96	188,107.17	47,026.79	129,133.96	106,000.00	59.94	Res. & Business	2,000	308,219	424,585	732,804
3	" "	88,740.12	70,992.10	17,748.02	62,740.12	26,000.00	62.93	Industrial		60,305	36,815	97,120
4	" "	239,534.26	191,627.41	47,906.85	144,534.26	95,000.00	46.55	Residential	1,200	109,979	187,493	297,472
5	" "	210,679.44	168,543.55	42,135.89	138,679.44	72,000.00	63.40	Residential	1,466	103,349	136,855	240,954
6	" "	108,315.02	86,652.02	21,663.00	61,315.02	47,000.00	20.64	Residential	2,500	66,050	137,345	203,395
7	" "	116,870.08	93,496.06	23,374.02	55,870.08	61,000.00	86.24	Residential	200	29,703	7,200	36,903
8	" "	13,598.20	10,878.56	2,719.64	6,598.20	7,000.00	22.11	Public Bldgs.		7,375		7,375
9	" "	4,261.07	3,408.86	852.21	3,261.07	1,000.00	6.67	Residential	125	4,465	10,145	14,610
10	" "	11,344.62	9,075.62	2,268.90	7,344.52	4,000.00	95.33	Business	300	20,195		20,915
11	Sewer	908,699.57	726,959.66	181,739.91	381,699.57	527,000.00	65.48	(x) Note	10,000	1,521,869	1,934,926	3,456,795
12	"	225,298.51	157,708.96	67,589.55	89,298.51	136,000.00	53.93	Residential	3,000	286,891	361,753	648,644
13	"	10,523.54	7,366.48	3,157.06	3,523.54	7,000.00	80.67	Residential	250	30,200	26,970	57,170
14	"	11,935.25	8,354.68	3,580.57	3,935.25	8,000.00	76.77	Residential	200	31,125	5,125	36,250
15	"	4,860.78	3,402.55	1,458.23	1,860.78	3,000.00	32.01	Residential	400	12,402	22,770	35,172
16	"	1,610.19	1,127.13	483.06	610.19	1,000.00	100.0	Residential	50	5,125	6,310	11,435
17	Street Paving	21,625.40	15,137.78	6,487.78	7,625.40	14,000.00	94.46	Residential	50	9,685	9,510	19,195
18	" "	34,960.93	24,472.65	10,488.28	12,960.93	22,000.00	62.75	Public Bldgs.		39,080	145	39,225
19	Bridge	464,104.47	324,873.13	139,231.34	201,104.47	263,000.00	77.07	# Note	10,000	1,643,455	2,133,151	3,776,606
20	Street Paving	12,425.72	6,212.86	6,212.86	7,425.72	5,000.00	100.0	Industrial		944		944
	Total	$3,151,336.84	$2,439,849.88	$ 711,486.96	$1,530,336.84	$1,621,000.00	62.04%					

Alex Hay, Tax Agent
May 12, 1934

Assessed valuation for ad valorem tax purposes is taken from 1932 assessment rolls on which taxes are payable in 1933. Washington Laws provide for property to be assessed at 50% of its true value, but assessments will not exceed 30%.

#Note: Assessment falls on all of the property in city limits.

(x) Note: Assessment falls on practically all of the property city limits.

573

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EXHIBIT P-43.

Copy

Halsey, Stuart & Co.

201 S. LaSalle St.
Chicago
May 9, 1927.

Mr. Alex Hay, Tax Agent
Longview,
Washington

Dear Sir:

In connection with our several offerings of Longview, Washington, Local Improvement District bonds, we have been asked occasionally for figures showing the actual and assessed valuation of taxable property of the City of Longview. At the time of our first offering last year we were given to understand that valuations for tax purposes were not yet available which would reflect urban valuations, but now that the City has been incorporated for several years we are wondering whether city property has not been assessed as such.

In connection with our current offering of Local Improvement District bonds, one or two sales are pending provided we can furnish our prospective customer with the figures, so we shall appreciate it if you can advise us the estimated actual value of taxable property of the City of Longview, the assessed valuation of this property, what general bonded debt the city has incurred, if any, and whether this general debt includes any water debt payable from direct taxation.

Thanking you in anticipation of your attention to this, we are

Very truly yours,
(signed) Halsey, Stuart & Co.

RES:MES
574

EXHIBIT P-44.

Copy

May 16, 1927.

Halsey, Stuart & Co.
201 South LaSalle St.
Chicago, Ill.

Gentlemen:

I am in receipt of yours of the 9th inst., with reference to L. I. D. Bonds of the City of Longview, Wash.

The assessed valuation for the City of Longview on March 1st and which was confirmed in August by the County Board of Equalization was $3,439,918.00. The State Tax Commission have determined that the property of the County was assessed at 40% of its true value, which would make the actual value as determined by the State Tax Commission $8.599,795.00. This is probably below the actual value of property in the City but it would be very difficult if not impossible to determine the actual value of the property, since it would be necessary to appraise all of the buildings which have been constructed, as most of them are private property and the Company has no figure on them.

The County Assessor has just completed the job of assessing property for this year but the figures will not be available until the County Board of Equalization meets in August. However, I anticipate that there will be a gain in the assessed value of the City of about $400,000.00 this year over last. This figure is only an estimate and should be treated as such. In about 60 days I will be in position to give you a closer figure if you care to have it at that time.

The City does not have any general bonded indebtedness.

The water system is privately owned and, of course, there will be no tax in connection therewith.

Very truly yours,

Alex. Hay,
Tax Agent.

AH/AW
cc SMM
RTD

EXHIBIT "W-1".

1/4/1939

C. H. Wolf,
N. P.

Halsey, Stuart & Co.
Incorporated
Chicago New York
Philadelphia Detroit
Cleveland St. Louis
Boston Milwaukee
Minneapolis

201 South LaSalle Street
Telephone Wabash 6900
Chicago, April 8, 1927

Mr. R. T. Demsey, Vice-President,
The Long-Bell Lumber Company,
Kansas City, Missouri.

Dear Sir:

We appreciate your confirmation of the figure representing excess value of stumpage over the book value as it appears in the financial statement we are incorporating in the circular descriptive of the new Longview, Washington, Local Improvement District bonds.

We are enclosing you herewith a preliminary copy of this circular which you may feel free to criticize.

Very truly yours,
(Signed) Halsey, Stuart Company.

RES:MES

EXHIBIT "W-2".

April 11, 1927.

Halsey, Stuart & Company,
201 South LaSalle Street,
Chicago, Illinois.

Gentlemen:

Herewith L. I. D. circular forwared with your letter of the 8th.

It is said that these bonds were issued to The Longview Company for improvements installed by it acquired by the City. This was true for District No. 11, which was created by the City to acquire the sewers constructed by The Longview Company.

The bonds to be offered by the present circular were issued for payment for work contracted direct by the City, and we had arranged to acquire the bonds from the contractors when such bonds were delivered to them by the City.

Also, herewith a suggestion by Mr. Kendall of our Advertising Department concerning Longview. This is sent you for such use as you may care to make of it, by way of either its adoption or revision of what you have already prepared.

When you have completed the circulars, will you please send me one dozen copies and oblige.

Very truly yours,

Vice President.

RTD G

EXHIBIT "W-3".

1/4/1939

C. H. Wolf,
N. P.

(Said Exhibit Appears on Letterhead of Halsey, Stuart & Co., as Set Out in Exhibit "W-1", Which Letterhead Is Omitted for the Sake of Brevity.)

August 11, 1930.

The Long-Bell Lumber Company,
Kansas City, Missouri.

Attention: Mr. R. T. Demsey

Gentlemen:

We wish to thank you for the May and June statements of the Long-Bell Lumber Corporation and subsidiaries. We note that the June statements have not yet been published so far as we have been able to ascertain, and we wondered when it was planned to publish them. If it is not intended to publish them, we should like to know whether we may give them to our salesmen or whether you would prefer to have them kept confidential.

Very truly yours,
(Signed) Halsey, Stuart & Co.
By M. S. Bromwell.

MSB-Y

EXHIBIT "W-4".

1/4/1939

C. H. Wolf,
N. P.

(Said Exhibit Appears on Letterhead of Halsey, Stuart & Co., as Set Out in Exhibit "W-1", Which Letterhead Is Omitted for the Sake of Brevity.)

Chicago, May 2, 1929.

Mr. R. T. Demsey, Vice-President,
The Long-Bell Lumber Company,
R. A. Long Building,
Kansas City, Missouri.

Dear Mr. Demsey:

Referring to our exchange of telegrams today, the quarterly income account was received in our office shortly after I sent you my telegram, it apparently being delayed in the mail. As I have told you on previous occasions, we would like very much to have these statements at least as soon as they are published in the newspapers as we frequently receive questions which we are not able to answer, not having the figures at hand.

Very truly yours,
(Signed) F. K. Shrader.

FKS-Y
578.

EXHIBIT "W-5"

1/4/1939

C. H. Wolf,
N. P.

(Said Exhibit Appears on Letterhead of Halsey, Stuart & Co., as Set Out in Exhibit "W-1", Which Letterhead Is Omitted for the Sake of Brevity.)

Chicago, May 11, 1929.

Mr. R. T. Demsey, Vice-President,
The Long-Bell Lumber Company,
R. A. Long Building,
Kansas City, Missouri.

Dear Mr. Demsey:

Since the publication of your figures for the first quarter, we have received several inquiries asking us if we know of any explanation for the unfavorable showing.

We should very much appreciate any information you may be able to give us with regard to this matter.

Thanking you, we are

Yours very truly,
Halsey, Stuart & Co., Inc.
By (Signed) M. S. Bromwell.

MSB-Y
579

EXHIBIT "W-6".

1/4/1939

C. H. Wolf,
N. P.

May 14, 1929.

Mr. M. S. Bromwell,
Halsey, Stuart & Company,
201 South LaSalle Street,
Chicago, Illinois.

My Dear Mr. Bromwell:

The inquiries to which you refer in your letter of the 11th, mentioning the unfavorable showing for the first quarter this year, are prompted I suppose by a comparison with the first quarter last year.

At the end of 1927 we closed the year with a heavy reserve for the difference between cost of lumber and what we thought represented market. At the end of the first quarter in 1928 we found that this reserve was much larger than necessary, and restored quite a portion of it to income account. The actual situation is that the first quarter this year was, in reality, considerably better from a strictly operating standpoint than the first quarter last year.

I am not taking the time to go back through the old records, as it would require much searching, but the difference is $200,000.00 or more in favor of the first quarter of this year.

This situation does not yield very well to a public explanation, and if you make any reference to it, I suppose it would be best to do so in a rather vague and guarded way, by referring to favorable inventory adjustment, or something of that purport, in the first quarter of last year, for which there was not a similar offset during the first quarter this year.

It is probably that I will be in Chicago for a day the end of this week, and if so, will stop at your office that I may have the opportunity of discussing with you the matter above mentioned.

Very truly yours.

Vice President.

RTD G

580

EXHIBIT "W-7".

1/4/1939

W. H. Wolf,
N. P.

(Said Exhibit Appears on Letterhead of Halsey, Stuart & Co., as Set Out in Exhibit "W-1", Which Letterhead Is Omitted for the Sake of Brevity.)

Chicago, June 25, 1929.

Mr. R. T. Demsey, Vice President,
The Long-Bell Lumber Company,
R. A. Long Building,
Kansas City, Missouri.

Dear Mr. Demsey:

In accordance with your instructions, we delivered to the Continental yesterday for your account $60,000 Long-Bell Lumber Company First Mortgage Series A6—1942.

I really owe you an apology with reference to my letter of June 20, inasmuch as I used some technical trading terms to explain our operations, which I should not have expected other than a trader to understand. We purchased 1942 or Series A bonds at 91 from our customers, selling them in exchange 1943 bonds at 89½ and 1946 bonds at 89. Of course, on the 1943 and 1946 maturities our average cost was considerably higher than these prices, which showed us the actual cash loss which I referred to in my letter.

You ask us in your letter of June 22 what our average cost was on the bonds we have already confirmed and what commission we charged you. Our average cost on the Series A bonds was 91.105752 and on the 1946 Series C bonds 90.53174. On a sinking fund operation or an operation of any kind in which we accumulate bonds in the market, our ordinary commission varies from ¼% to 1%, depending upon the size of the operation. That is, if we have an order to buy $5,000 or $10,000 bonds, we do not ordinarily charge more than ¼%. Where the amount is substantial, as in your case, and the operation extends over a period of several months, the ordinary commission is 1%.

In Mr. Stuart's letter to you in January, a portion of which you have quoted in your letter, Mr. Stuart specifically says, "and will deliver them to you as fast as we

are able to make the purchases". The rate on one-month to six-month time money in New York during the past six months has been consistently from 8% to 9½%. The money market has been very tight in all financial centers. Many dealers have been unable to participate in new issues as they come out, because of their inability to get bank accommodations. It is for this reason that we have charged you the additional 1%, which is really a carrying charge for the two or three months that we have carried the bonds for your account.

We trust that this makes the matter clear, and believe that you will agree with us that it is a very fair charge.

Thank you for your kindness to me personally, with reference to your additional letter to the officers of the Company in Longview.

Yours very truly,
Halsey Stuart & Co.
(Signed) Nelson M. Utley.

NMU:ES
582

EXHIBIT "W-8".

1/4/1939

C. H. Wolf,
N. P.

June 27, 1929

Mr. Nelson M. Utley,
Halsey, Stuart & Company,
201 South LaSalle Street,
Chicago, Illinois.

My dear Mr. Utley:

We received notice of the delivery of the $60,000.00 par value of Series A bonds, mentioned in your letter of the 25th, and I suppose the remaining $30,000.00 has been or will be delivered today or tomorrow. I am also obliged to you for your explanation about the trading transaction, which makes the matter clear to me.

About the commission, we had nothing to guide us in our thinking about this, but knowing the rate in effect for listed bonds, we were not assigning so high a rate as you mentioned for a sinking fund transaction in unlisted bonds, and had not thought of a much higher rate for a transaction of considerable consequence, and a lower rate for a comparatively small amount, but, of course, as to this, we naturally expect to be governed by what is customary.

While it is not accurate, it will serve as an illustration to assume the carrying of the bonds for a period of two months, and taking into account the 6% coupon rate, the one point additional means an interest cost to us in excess of 12%. When suggesting that the bonds be carried for a period rather than our accepting delivery as they came into your possession, we did not have in mind that this would involve a further interest cost to us above the 6% coupon rate, because if this had occurred to us we would have, in that event, arranged to pay for the bonds as fast as you were in a position to deliver them.

I hope nothing further will happen to change the various dates for your prospective trip, and that you can, without fail, adhere to the plan of having the visit in Longview, which you now have on your schedule.

Very truly yours,

.....

Vice President

RTD G

EXHIBIT "W-9".

1/4/1939

C. H. Wolf,
N. P.

(Said exhibit appears on the letter-head of Halsey, Stuart & Co., as set out in Exhibit "W-1", which letter-head is omitted for the sake of brevity.)

Chicago, April 2, 1930

Mr. R. T. Demsey,
Vice-Pres., The Long-Bell Lumber Co.,
R. A. Long Building,
Kansas City, Missouri.

Dear Mr. Demsey:

In answer to your letter of March 31, addressed to Mr. Shrader, we delivered on Monday of this week $21,000 Series C 1946 bonds to the Central Trust Company, leaving approximately $11,000.00 on deposit with the Trustee out of your original remittance. The bank advised us yesterday that they now have a balance of $39,833.42 to the credit of the Sinking Funds, against which we expect to deliver securities in the immediate future.

We are bidding 72 for the bonds and I believe all deliveries up to this time have been made at 72-1/2, or less. While the bonds continue to come in as rapidly as they have at about this price there appears to be no reason for advancing the bid.

Very truly yours,
Halsey, Stuart & Co.
(Signed) Nelson M. Utley

NMU F
584

EXHIBIT "W-10".

1/4/1939

C. H. Wolf,
N. P.

(Said exhibit appears on letter-head of Halsey, Stuart & Co., as set out in Exhibit "W-1", which letter-head is omitted for the sake of brevity.)

Chicago, April 18, 1930.

Mr. R. T. Demsey,
Vice-Pres., The Long-Bell Lumber Co.,
R. A. Long Building,
Kansas City, Missouri.

Dear Mr. Demsey:

In answer to your letter of April fifteenth, I believe that we can best accumulate Series A and Series C First Mortgage 6s for your sinking fund by continuing to buy bonds in the market at any reasonable price at which they are offered, as we have been doing the past two months.

During the time that the rest of the bond market was much stronger we did not advance the bid on our bonds and continued to buy them, probably because of the general lack of interest, at the present time, in securities of this character. I think the recent publication of your statement may also have helped us in buying bonds at low prices.

It may be that the market is fairly well cleaned up at present levels and, of course, it was only last August that your bonds sold close to 90. However, I believe that unless there is some decided change in the immediate future in the bond or lumber markets that we will be able to satisfy your sinking funds at an average price in the neighborhood of 80. We are now bidding 73 for all series.

If we do not begin to buy bonds in the near future we will advance the bid until bonds begin to come out. We will, you may be sure, make every effort to buy the maximum number of bonds at the lowest prices possible.

Very truly yours,
Halsey Stuart & Co.
(Signed) By Nelson M. Utley

NMU F

EXHIBIT "W-11".

1/4/1939

C. H. Wolf,
N. P.

February 17, 1930

Confidential
Mr. F. K. Shrader,
Halsey, Stuart & Company,
201 South LaSalle Street,
Chicago, Illinois.

My dear Mr. Shrader:

While in San Frnacisco, we came to an understanding with Messrs. Donnelly, Budd and Gray, to the effect that the Northern Pacific, Great Northern and Union Pacific will purchase twenty-three miles of the Longview, Portland & Northern Railway from Vader south to Longview Junction, including the terminals in the town of Longview. This leaves the L. P. & N. Railway Company owning its power and logging cars, also seven miles of line from Vader to Ryderwood, the logging headquarters of the Long-Bell Lumber Company. The price is cost for the part of the line sold, and the L. P. & N. will also retain running rights from Vader to the Long-Bell mill in Longview for transportation of forest products.

Just as quickly as possible, the Railway Company will verify our books, and a formal contract will be drafted, also an application to the Interstate Commerce Commission for authority to purchase, and when these documents have been approved by the Boards of Directors of the various railway companies, all papers will be filed with the Commission.

Several weeks will necessarily elapse before the application can be filed with the Commission, and even though there have been rumors of this sale arising out of the meeting in San Francisco, we do not wish to confirm it now, and possibly not until the application is actually filed, and will, therefore, hope that it may in the meantime remain in the realm of rumor.

Because of not purchasing all of the [redacted], there are a number of items to be allocated between the part of the road purchased and that not purchased, and I rather suspect the figure arrived at as the amount to be paid by the railway companies will be in the neighborhood of $4,000,-

000.00. Thus definitely providing for retirement of the Gold Notes, since, in connection with passing clear title to the trunk line group, it is the intention to cancel the bonds, and $750,000.00 would accrue to our Treasury, plus any amount that we may save in the event of undertaking to purchase Gold Notes in the market at a discount.

The amount we will pay for trackage rights will not be very greatly in excess of the amount it has cost us to operate over the line, owning it, and because of the retirement of the Gold Notes, thus cancelling the interest charge on them, we will actually have in the Treasury more money as a result of the sale, than the present situation of owning the entire line.

Mr. Long remained in California, and he asked me to say to you that you may hear further from us in a definite way within the next two or three weeks, regarding an effort to purchase Gold Notes in the market, about which he telephoned you from San Francisco.

Very truly yours,
Longview, Portland & Northern Railway Company,
By

Secretary-Treasurer.

RTDG

EXHIBIT "W-12".

1/4/1939
C. H. Wolf,
N. P.

February 17, 1930

Confidential
Mr. F. K. Shrader,
Halsey, Stuart & Company,
201 South LaSalle Street,
Chicago, Illinois

My dear Mr. Shrader:

Logs to be cut in our Weed mill are delivered to the Southern Pacific at a point about sixty miles north of Weed, California.

We have a line of railway extending from such connection with the Southern Pacific, a distance of about forty miles, over which we transport logs for delivery to the Southern Pacific. This line is not incorporated as a common carrier, but is owned by Long-Bell.

While in San Francisco, our group called on Mr. Paul Shoup, President of the Southern Pacific, to discuss with him the purchase of our line, it having been previously proposed that he give consideration to this. Mr. Shoup answered that the Southern Pacific preferred not to purchase the line, but that he would recommend to his Board that they make a loan to us, to be amortized by equal payments over a period of twenty years, with interest computed at 5 1/3%.

It was thought by Mr. Shoup that this is a transaction which it will not be necessary for the I. C. C. to approve.

I rather suspect that the final outcome will be that the Southern Pacific will loan us probably not less than $1,000,000.00 in connection with this transaction. I have not attempted to make any exact computations, but I suppose the annual amortization will be between $70,000.00 and $75,000.00 per year. The result is that we bring back into our Treasury, for current requirements, a large lump sum to be repaid over a long period on a comparatively easy basis.

Very truly yours,
The Long-Bell Lumber Company,
By

Vice President.

RTD G

EXHIBIT "W-13"

1/4/1939

C. H. Wolf,
N. P.

May 15, 1930

Mr. Jesse Andrews,
Klamath Falls,
Oregon

My dear Mr. Andrews:

The trip to New York was an outstanding one in many respects, and I will want a couple of hours of your time as soon as you return.

We returned from New York with all of our lines confirmed, a total of $4,000,000.00, giving us an aggregate of $8,600,000.00. The only item remaining unsettled is the $500,000.00 in St. Louis, and Mr. Lonsdale will soon be visited, and it does not seem to me unreasonable to expect that his bank will confirm, bringing our total to $9,100,000.00.

At the Equitable, we met with the very positive suggestion that we should create a new company (to be the company to borrow from banks), which should own the quick assets and be "window-dressed" with some other property not bonded. I have not had time to go into the subject very thoroughly, but enclosed is a tentative, illustrative balance sheet for such a new company.

Coming back from New York, Mr. Long assigned to Mr. Nelson the job of leaving Kansas City for the west at some rather early time, arranging for Mr. Tennant to join him, to present, through Mr. George S. Long, our request for an extension of the Weyerhaeuser 1930 principal payment, and as it appears now probably also the 1931 payment, and to see Mr. Willis Walker about extension of Walker contract principal.

Also during the return trip from New York, Mr. Long assigned to you and to me the job of considering the creation of a new company as above mentioned, and bring it into existence just as quickly as possible, if it is decided to go forward with such an undertaking. It is, of course, important in connection with creating such a new company that we do not bring about a condition that will be embarrassing, because of preventing a flow of funds, on loan or open account, between the ne company and the parent company either way. Befc e bringing this new company into existence, if we decide to do so, and it now appears we probably should, we will want to be sure that we have something which meets the thought of our commercial banks and will remove their present extreme nervousness. On the other hand, we must before acting, prevail upon Halsey, Stuart to approve the plan since we certainly cannot afford to have Mr. Stuart in disagreement with us about any major matter.

I am writing you upon the request of Mr. Long, with which I am in accord, it being our thought that between now and your return to Kansas City, you can, with this advance notice, be turning over in your mind the various problems relating to the creating of a new company such as above mentioned, and thus we will have gained considerable time, as compared with awaiting your arrival here before letting you know of the situation as it now stands.

With kind regards, I am,

Sincerely yours,

Vice President.

RTD G
cc to Mr. Andrews at
Santa Monica, Calif.

EXHIBIT "W-14".

C. H. Wolf,
N. P.

June 27th, 1930.

Mr. H. L. Stuart
Halsey, Stuart & Company,
201 South La Salle Street,
Chicago, Illinois.

My dear Mr. Stuart:

I am pleased to advise that we had a meeting yesterday with one of the prominent executives of the Washington Gas & Electric Company in our office and reached a definite agreement with reference to the sale of our power house to them.

I think you understand this will mean the retirement of all of our bonds up to and including 1933, and about $250,000 on our 1934 bonds. And besides will bring into the treasury of our company for operating purposes about $700,000.00.

Mr. Andrews and the attorneys of the power house company will meet in the early part of next week for the completion of the contract, which, when completed becomes a firm contract but the money will not be paid us until September first.

Yours very sincerely,
R. A. Long,
Chairman.

RAL RWE

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EXHIBIT "W-15".

1/5/1939

C. H. Wolf,
N. P.

(Said Exhibit Appears on Letterhead of Halsey, Stuart & Co., as Set Out in Exhibit "W-1", Which Letterhead Is Omitted for the Sake of Brevity.)

Chicago, June 30, 1930.

Mr. R. A. Long, Chairman,
Long-Bell Lumber Company,
Kansas City, Missouri.

Dear Mr. Long:

Please accept my thanks for your note of the 27th received this morning. I congratulate you on the sale of the power house and, as I told you when you were here, it seems to me a most remarkable commentary on the underlying strength of your business to witness liquidation of property on such advantageous returns.

Last week Mr. Calvin Fentress of Baker, Fentress & Co. telephoned me and stated that he and his associate Mr. Graf would like to talk with me. I invited them to luncheon today, which was the first time I had open. Mr. Fentress did not say what they wished to talk about but I assumed that it was about timber conditions and I found that it was. As you know, they are exclusively dealers in timber bonds and I judge that the outlook for their business is not a very rosy one. Both of them voluntarily made the statement that commercial banks were frowning on accounts of lumber and timber companies and that the policy of all commercial banks they are familiar with had been to close out accounts of such companies. All this was a voluntary comment but it was extremely interesting to me in view of Mr. Lonsdale's attitude. Of course I said nothing whatever about your affairs other than our extreme confidence in you and your organization to work yourselves out with credit in any situation, but I thought just the same that in view of their intimate knowledge of the lumber industry and their knowledge of the attitude of commercial banks, that perhaps your banks, except for Mr. Lonsdale's, had behaved themselves very well.

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The real purpose of this meeting was to talk over the question of whether Halsey, Stuart & Co. would be willing to associate themselves with Baker, Fentress & Co. and perhaps the First Detroit Company and other responsible institutions who have handled timber bonds and attempt to be of practical assistance to a lumber man in endeavoring to work out a consolidation or some other plan which would put the lumber industry on a better basis. Both these men are, of course, very familiar with the attempts which have been made to improve conditions in the fir industry and they are also quite familiar with the plan which you proposed last January. They seemed to think that there was more merit in your plan than in any plan which has yet been proposed.

I told them we were anxious to do anything we could within reason to be of assistance but that we would not indicate what, if anything, we might be able to do without thinking it over, and I had in mind first of all putting the matter up to you to see whether you have any objections to our talking further with Baker, Fentress & Co. I really believe that we would be slow to take the leadership along the lines suggested by Baker, Fentress & Co. because of the immense amount of time it would take of some of the principal men in our organization, because, after all, this is a problem which demands the best ability we could supply. While our interest in the timber business is considerable through yourselves and Pickering, these two companies I believe represent practically all of our interest in the business and, while important, our biggest interests, as you know, have been in other directions, principally public utilities, and these concerns demand some attention and certainly money. However, if you approve and think it would be a good idea for us to talk further with Mr. Fentress and Mr. Graf, we will do so and perhaps out of it all might come an arrangement in which we could participate and which would be of real constructive help in the thing you are trying to do. On the other hand, if you wish us to do nothing, please do not hesitate to say so and I assure you it will not be the slightest embarrassment to us, for we left the matter with Baker, Fentress & Co. in such way that we can simply give it some thought and can just as well as not say that we do not care to discuss the matter further, and they will understand it, because, as Mr. Fentress stated, he knew that our biggest interests were outside the lumber business, while his interests are almost entirely in that business.

I am sure that Mr. Andrews gave you my message, which was to ask you to kindly let me know the outcome of your next talk with the Chase Bank.

With kind regards, I remain

Very truly yours,

HLS-F (Signed) H. L. Stuart.

DEFENDANT'S EXHIBITS.

DEFENDANT'S EXHIBIT 3.

Excerpts From Minutes of Finance Committee Meetings.

May 16, 1930—Those present were H. S. Nollen, F. C. Hubbell, F. W. Hubbell, J. W. Hubbell and Griff Johnson.

"The following Bond Offering was approved for purchase from Halsey, Stuart and Company, Chicago: $100,000 Longview, Washington, Local Improvement 6% Bonds, at 6% less ¼."

Aug. 12, 1930—Those present were H. S. Nollen F. C. Hubbell, F. W. Hubbell, J. W. Hubbell and John M. McGill.

"The following Bond offerings were approved for purchase by the Committee: $15,000 Longview, Washington, 6% Bonds, at 100 less ¼ from Halsey, Stuart and Company."

Aug. 19, 1930—Those present were H. S. Nollen, F. W. Hubbell, J. W. Hubbell, Griff Johnson and John M. McGill.

"The following Bond Offerings were approved for purchase from Halsey, Stuart & Company: $10,000 Longview, Washington, 6% Bonds, at 100 less ¼, additional to the $15,000 purchased August 12, 1930."

Sept. 26, 1930—Those present were H. S. Nollen, F. C. Hubbell, F. W. Hubbell, J. W. Hubbell, and Griff Johnson.

"The following Bond Offerings were approved for purchase: $5,000 Longview, Washington, 6% Bonds, at 6% less ¼, from Halsey, Stuart and Company of Chicago."

Oct. 10, 1930—Those present were F. W. Hubbell, J. W. Hubbell, Griff Johnson and John M. McGill.

"The following Bond Offering was approved for purchase by the Committee from Halsey-Stuart and Company of Chicago: $9,000 Longview, Washington, 6% Bonds, at 6% less ¼."

Oct. 17, 1930—Those present were H. S. Nollen, J. W. Hubbell, F. W. Hubbell, Griff Johnson and John M. McGill.

"The following Bond Offerings were approved for purchase by the Committee: $185,000 Longview, Washington, Water works Electric and Gas Improvements 6% Bonds, at 6% less ¼, from Halsey, Stuart and Company, Chicago; Illinois."

Oct. 28, 1930—Those present were H. S. Nollen, F. W. Hubbell, J. W. Hubbell, Griff Johnson and John M. McGill.

"The following Bond Offerings were approved for purchase from Halsey, Stuart and Company of Chicago: $2,000 Longview, Washington, Waterworks, Electric and Gas Improvement 6% Bonds, at 100 less ¼."

The above are exact excerpts from the Minute Book of the Finance Committee Meetings held on the dates indicated.

John M. McGill,
Secretary.

DEFENDANT'S EXHIBIT 4.

June 3, 1931.

Dear Fred,

The situation here in Long View is so dependent on the successful future of the Long Bell Lumber Co. as to make it almost a subsidiary of that company. While neither the Long Bell or Weyerheuser mills or any of their important subsidiaries are within the city limits, it is true that almost all their employees live here and buy here. In the case of Long Bell the employees must live in Long View. The Weyerheuser employees may live in Kelso if they want but those who prefer a better surrounding for their families will be found this side of the Cowlitz. There you have the picture of the citizenry from the well-to-do vice presidents to the poorest log roller. Add to that the merchant and professional class that are here to serve the rest and you have the whole works. There is also a constant stream of tourist trade during the summer months.

The minority interest of Long View is owned by the lot owners both residential and commercial. The wealthier with fine homes from fifteen to thirty thousand, (which are very few) and the rest with smaller ones all the way

down to fifteen hundred and less. In the case of the latter they have bought them on the installment plan at very little a month with assessments paid. There is also a small group of lot owners who live about the country, (probably plenty in Kansas City), who own vacant lots, (a la South Houston). The majority interest of Long View is owned, out of 10,000 descriptions of property sent out only 3000 were not Long Bell's in #11 & 19 (over 60% and I believe 75% is nearer), by the Long View Co. The later is of course a subsidiary of the Long Bell Lumber Co.

The City itself presents an amazing picture. It is new well cared for, but terribly spread out. There are business districts spread out with vacant lots between. The various residential districts are seperated by large tracts of vacant land. On the West is a large tract that is devoted to farming and had many head of good looking Jersey cows grazing. The City is highly zoned and that I believe accounts for its very spread out appearance. Once in a zone so to speak the place looks great but then the next block is barren and covered with grass. The homes of the well-to-do are all together and front on a long park and is as attractive a development as I have ever seen. The poorer classes of homes are grouped far away in other sections and some are well cared for. There are several of the latter districts all seperated and some have very poor houses that are in need of paint and repairs. Long View also has its Negroe quarter which is separated by some distance. The parks, and especially those in front of the hotel and nicer homes, are really beautiful and kept up to the minute. The Long Bell people do this themselves. The High School, Church and Library were all gifts of Mr. Long and are excellent and beautiful buildings although it costs the town twelve thousand a year to keep up the Library. But do not lose sight of the fact that there is a tremendous amount of vacant land that is not by any means confined to the outskirts but goes through the town from one end to the other.

The City of Long View is assessed for 4,912,040.00 and has a tax rate of 18.75 a thousand and no bonded debt. There are outstanding only about 20,000 of warrants which are to be retired as soon as the taxes come in. The water, gas and electricity is retailed direct to the consumer, also the sewer, by the Washington Gas and Electric Co. with the exception that the City pays rent on the Fire Hy-

drants & street lights. The taxes are due semi-annually May 31 and November 30. There was due this year half of which was due last week 76,058.36 and add to this the delinquent items of past years and the total is 90,748.31 to be collected in 1931. The only charges against this is the running of the City. They recieve two percent on their bank balances with which they form a revolving fund with which they take care of the delinquencies on the L. I. D. bonds at the end of the 12 years. There is at present 10,835.0. in this fund.

The school district which includes among other things the entire city of Long View has an assessed of 9,433,182.00 and this year will have an added 250,000.00 for a new district. The tax has been 20 mills or 20 dollars a thousand but will be lowered to 16 or 18 this year. This services a bonded debt of 507,514.00 and furnishes funds for general maintenance. It is assessed on a 25% basis. The uncollected item at present in taxes is 72,124.27 but the secretary, Mr. Ragland said fifty thousand was coming in almost at once from the May 30 collections.

As for our Local Improvement Districts—Turn to the map and you will see that Districts 19 and 11 cover the entire city and the part of 11 that goes north by the country club is a pine covered hill so it doesn't make much difference. Over 60% 75% of the land in the city as I said is owned by the Long View Co. so that is where our money is to come from. Now these assessments are paid one tenth a year in the numerical order of the bonds. So far we have been fortunate in haveing the interest and principal paid promptly. But on May fifth last the Long View Co. found it would cost them 5½% to let their assessments go delinquent and 6% to borrow from the banks so they did the obvious. As a result the interest in District 11 was paid but 90,000 bonds were not called. In other words bonds #359 to 449 were not paid. As we own #367 to 408 this effects us directly. The District #19 is not due for a call till December and it remains to be seen what will be done. There is however a very comforting law in the State of Washington which states that if L. I. D. bonds are allowed to go two years delinquent foreclosure proceedings start automatically. Of our holdings we own 267,000 in these two districts.

For the other districts—#1 and 2 are the best as they include in the center the various business sections, on the north and south some of the middle class and cheaper

homes of frame construction and cottage type, on the West the excellent Montecello Hotel and still farther toward the park the homes of the well-to-do with grounds, and on the East the petering out of the business districts and a few scattered homes of the poorer type and to the southeast the negroe quarter. These two districts are about 60% or better improved n the best part and about 30 to 40% elsewhere as there are many vacant tracts thruout.

District #5 is very bare except on the East where it is well built up with the cottage type of home. Toward the West it becomes waste land wooded and farmed. The entire district is not more than 20% improved if that.

Districts #4, 6, 7 are about 40% improved all together but it is almost impossible to tell about them seperately as they have overlapping boundries and there is much scrub that cant be seen over. They are right under the guns of the Weyerheuser mills so they are not very attractive for homes on the south of 7 and 6. What homes there are, are poor and small of almost one room except at the north side of 4 facing the park they are quite attractive by comparison but do not come up to the ones in 1 by a long shot.

District #20 is a vacant tract in wild weeds and brush.

Districts #17 and 18 are very small, (see ink lines on map) and are fair. 17 is about 80% improved with small frame cottages in good repair and clean. #18 is near the park and while they are all vacant lots they are plotted and belong to the company without doubt.

Well that's Long View and I frankly wish we were out of it. If the Long Bell goes broke just what the receiver will do about paying assessments I dont know. If they dont go broke just how long they will stay off paying their large assessments on vacant property I dont know. That no one is going to dash in and buy up property during this present depression I do know. That Weyerheuser hasn't a cock-eyed thing to do with it and is damn glad of it is also known. That the Long Bell will be in the money if the I. C. C. will sanction the sale of their logging railroad is another thing again; and will that help for long? Both Weyerheuser and Long Bell are only running one shift instead of two. Each employ about 1200 at present. The pulp and paper boys are running double shift. Weyerheuser is building a large pulp mill, outside the city limits. Kelso and Ranier are very near if the taxes get too hot for the worker in Long View.

I talked to J. D. Tennant the head V. P. in charge of Long Bell's operations but of course got only soft soap. I couldn't ask him if he was going broke! I really think I have done all the good I can here and will talk to the bankers in Portland on Friday but as I said in my last letter the men in Seattle were 100% agin!

It looks to me as though this was another Dallas deal. If it goes as it has till recently and the slump ends and lumber booms we have a good investment. If on the other hand the December calls do not come through and the depression lasts for another year and lumber stays sour and Long Bell gets into deeper water we have a decided risk here. Back of it all is the guarantee of Long Bell which is only as good as Long Bell which pays at least 60% of the assessments—so we sink or swim with a lumber company that is already in a high wind.

Talking to the banks and local men was not very satisfactory as most every one in town is connected with the founder and all are of course boosters.

(Signed) Jim.

DEFENDANT'S EXHIBIT 5.

The Long Bell Lumber Company
Longview, Washington

July 28, 1931.

Halsey, Stuart & Co.,
201 South LaSalle Street,
Chicago, Illinois.

Attention: Mr. R. E. Simond.

Gentlemen:

Referring to your letter of the 7th inst., being an inquiry for information in connection with general taxes, diking district assessment and various local improvement district assessments; the general taxes collected in the City of Longview for city purposes only were as follows:

1927—$63,575.02 of which $1,314.69 is now delinquent.
1928—$79,330.64 of which $3,174.34 is now delinquent.
1929—$91,780.53 of which $8,014.62 is now delinquent.
1930—$92,100.75 of which $48,154.39 is unpaid.

You understand that the taxes levied in the above years are payable the following year. In other words, the 1930 taxes are due one-half on or before May 30, 1931 and the second half due on or before November 30, 1931, and of the $48,154.39 general taxes for 1930 which are unpaid there is approximately $2,104.10 delinquent.

From the above and from close contact with county officials, I am satisfied that general tax payments are coming in this year better than they were last year even in the face of present economic conditions.

General taxes levied against property in the city of Longview for all purposes were as follows:

	Assessed Value	Millage Rate	Gen. Taxes
1927	$3,973,439.00	69.42	$275,836.14
1928	$4,407,258.00	75.36	332,130.94
1929	4,670,765.00	77.42	361,610.63
1930	4,912,040.00	73.50	361,034.94

It would be difficult to determine of the amount of taxes levied in the City of Longview for all purposes the amount which is delinquent, but if this information is necessary, I will attempt to procure it. It would also entail a considerable amount of work to determine the percentage of general taxes levied in the City of Longview which are paid by Long Bell Lumber Company, and subsidiary companies; however, you already have the figure on the 1930 general taxes which are payable in 1931 and that figure for Long Bell and subsidiary companies was 38%.

The Company has sold a total of 3,167 lots. We now have sold under contract 301 lots on which the Company has agreed to pay the local improvement district and diking district assessments. These lots on which we have agreed to pay the assessments are for the most part residential property which will probably carry on an average a lower local improvement district and diking district assessment.

With reference to the amount of special assessments which Long Bell Lumber Company and subsidiaries are cast to pay, I find that of the total amount of local improvement district assessments due this year that Long Bell and subsidiaries are cast for 79% and of the assessments for Consolidated Diking Improvement District #1, I find Long Bell and subsidiaries are cast for 87%. The local improvement district assessments are only on property inside the corporate limits of Longview, while the

diking district assessments cover all of the property in the city of Longview and some 5,000 or 6,000 acres outside of the corporate limits.

Your understanding as to the date of special assessment and general taxes is in error. General taxes are due one-half on or before May 30th and one-half on or before November 30th. If the first half of general taxes are not paid by May 30th, they then become delinquent and draw interest at the rate of 10% per annum. The second half is not delinquent until after November 30th. Dike assessments are due and payable on or before May 30th and November 30th as are general taxes, although there is some question as to whether only one-half of the dike assessments become delinquent on May 30th or whether the full amount is delinquent on that date. As to local improvement districts assessments, these are due on the same date on which the district was formed and of the twenty local improvement districts of Longview which you handle, these fall due on various dates throughout the year.

I shall be glad to furnish you such additional information as you care to have from time to time.

Very truly yours,

(Signed) Alex Hay,
Tax Agent.

AH:AW

DEFENDANT'S EXHIBIT 6.

Consolidated Balance Sheet

The Long-Bell Lumber Corporation
and Subsidiary Companies
Kansas City, Missouri

January 1, 1931
The Long-Bell Lumber Corporation
Officers and Directors

R. A. Long, Chairman	Kansas City, Mo.
M. B. Nelson, President	Kansas City, Mo.
J. H. Foresman, Vice-President	Kansas City, Mo.
J. D. Tennant, Vice-President	Longview, Wash.
W. L. Prickett, Vice-President	Kansas City, Mo.
S. M. Morris, Vice-President	Longview, Wash.
R. T. Demsey, Vice-President	Kansas City, Mo.
E. C. N. Brown, Vice-President	Kansas City, Mo.
R. W. Stith, Secretary-Comptroller	Kansas City, Mo.

R. P. Combs, Treasurer.....Kansas City, Mo.
Jesse Andrews .....Kansas City, Mo.
J. H. Bester .....Kansas City, Mo.
Waddill Catchings .....New York, N. Y.
L. L. Chipman.....Longview, Wash.
R. S. Davis .....Kansas City, Mo.
A. B. Everitt .....Kansas City, Mo.
John M. Hancock .....New York, N. Y.
G. A. Houston .....Kansas City, Mo.
J. H. Lane.....Kansas City, Mo.
Roy F. Morse .....Longview, Wash.
A. L. Sweet .....Kansas City, Mo.

W. A. Barker, Assistant Secretary.....Kansas City, Mo.
L. C. Stith, Assistant Secretary.....Longview, Wash.

Executive Office
R. A. Long Building
Kansas City, Missouri
The Long-Bell Lumber Corporation
Kansas City, Mo.

March 21, 1931.

To the Stockholders of
The Long-Bell Lumber Corporation:

Financial report for the year ending December 31, 1930, is submitted herewith:

The depression, which has been world-wide in its scope, has affected all lines of industry, but I believe the lumber business has encountered more difficulties than almost any other. Since all forecasts previously made by ourselves and others have gone wide of the mark, we hesitate to express our expectations as to the future, and while we believe, beginning with the first of March, we will see a slight improvement we do not anticipate a very rapid recovery. However, stocks in the hands of distributors and industrial consumers are lower than at any time in the past twenty years and any increase in the consumption will probably be reflected by an improvement in price.

We have effected some substantial reductions in our production costs, which will improve our showing over the last quarter of 1930 on the basis of the present selling price, but we cannot hope for any very decided improvement until we have a general betterment in business conditions and an increased consumption of lumber.

The Long-Bell Lumber Corporation,
M. B. Nelson,
President.

(Letterhead of Ernst & Ernst, Accountants and Auditors, System Service, Kansas City, Federal Reserve Bank Bldg.)

March 20, 1931.

The Long-Bell Lumber Corporation,
Kansas City, Missouri.

Gentlemen:

We have audited, as of December 31, 1930, the accounts pertaining to the assets and liabilities of The Long-Bell Lumber Corporation, Kansas City, Missouri, and its Subsidiary Companies as follows:

Direct Subsidiary

The Long-Bell Lumber Company (98.94% owned by The Long-Bell Lumber Corporation)

	Per Cent of Stock Owned by the Long-Bell Lumber Co.
Subsidiaries of The Long-Bell Lumber Company	
Long-Bell Lumber Sales Corporation	100.00
The Longview Suburban Company	100.00
The Longview Dredging & Construction Company	100.00
The Longview Stevedoring Company	100.00
Longview, Portland & Northern Railway Company	100.00
Weed Logging Railroad Company	100.00
Louisiana & Pacific Railway Company	90.196
Mississippi Eastern Railway Company	99.339

	Per Cent of Stock Owned by Long-Bell Lumber Sales Corp.
Subsidiaries of Long-Bell Lumber Sales Corporation	
The Longview Company	100.00
Long-Bell Farm Land Corporation	100.00
Long-Bell Service Station, Inc.	100.00
The Sibley, Lake Bisteneau & Southern Railway Company	94.638

	Per Cent of Stock Owned by The Longview Co.
Subsidiaries of The Longview Company	
Longview Public Service Company	100.00
Longview Memorial Park	100.00

During the year the Long-Bell Lumber Sales Corporation was organized and its entire authorized capital stock consisting of 10,000 shares of the par value of $100.00 per share was issued to The Long-Bell Lumber Company for certain assets of that Company subject to certain liabilities assumed by the Long-Bell Lumber Sales Corporation.

The Long-Bell Lumber Sales Corporation entered into a syndicate loan agreement with certain banks as of November 1, 1930. This agreement provides that all loans made thereunder by the banks to the Long-Bell Lumber Sales Corporation shall be unconditionally guaranteed by The Long-Bell Lumber Corporation and The Long-Bell Lumber Company; also that certain cash deposit balances be maintained and that cash on deposit in the banks to the credit of the Long-Bell Lumber Sales Corporation, The Long-Bell Lumber Corporation and The Long-Bell Lumber Company be pledged to secure such loans as may be outstanding. The records, which were in accordance with verification advices received from the respective banks, indicated that notes in the amount of $5,400,000.00 were outstanding under this agreement. Cash deposit balances in the respective banks subject to the syndicate loan agreement amounted to $2,098,738.32.

The assets transferred by The Long-Bell Lumber Company to the Long-Bell Lumber Sales Corporation, less liabilities assumed by the Sales Corporation, resulted in a paid in surplus of $19,793,336.60. This amount is reflected in the Consolidated Balance Sheet of the Long-Bell Lumber Sales Corporation and subsidiaries, made a part of this report.

The Weed Logging Railroad Company was organized during the year and acquired from The Long-Bell Lumber Company the logging railroad serving the lumber manufacturing plant located at Weed, California. The entire issue of capital stock of this company is owned by The Long-Bell Lumber Company and the company is indebted on notes payable dated April 12, 1930, and maturing serially over a period of twenty years in the principal amount of $1,000,000.00, secured by first mortgage on the Company's property, and guaranteed by The Long-Bell Lumber Company.

Cash on deposit was verified by certification received from the depositary banks and securities were examined

by us or otherwise verified. Current notes and accounts receivable consist of the following:

	Accounts	Notes	Total
Wholesale division after deducting estimated freight of $209,450.66	$ 742,851.61	$ 39,110.83	$ 781,962.44
Retail yards	675,400.01	256,421.20	931,821.21
Store and other	614,412.78	112,356.18	726,768.96
Totals	$2,032,664.40	$407,888.21	$2,440,552.61

We have reviewed the notes and accounts receivable carried and, based upon our examination and information relative thereto furnished us by officers of the Company, it is our opinion that reasonable allowance has been provided for probable shrinkage in these assets anticipated at this date.

Inventories are set forth in the following summary:

Logs	$ 537,426.33
Lumber and lumber products at mills	3,895,507.00
Creosoting material, etc.	587,255.83
Lumber, coal and building material at yards	2,174,822.37
Stock of general merchandise	484,112.33
Plant supplies, etc.	307,067.82
Total	$7,986,191.68

Log inventories are valued at cost at point of location and lumber inventories of producing divisions are valued at the lower of cost or market, cost representing stumpage at book value plus logging and production cost. Lumber inventories of retail yards and other products and merchandise are valued at cost or market, whichever is lower, consideration having been given to the element of intercompany profit. We made tests of inventory prices used and mathematical accuracy of extensions and footings, but did not verify quantities shown in the inventory records.

Sinking fund deposit accounts, amounting to $690,555.10, were verified by correspondence. The amount of $6,024,330.35 represents alances on contracts covering sales of timber referred to in previous reports. Land and real estate sales contracts and notes include:

Contracts for sales of southern farm lands	$ 381,419.83
Contracts for sales of farm lands and real estate at Longview, Washington	1,020,189.44
Accrued interest on above	47,816.00
Total	$1,449,425.27

Unpaid capital stock subscriptions of officers and employees amounted to $693,490.16 at December 31, 1930, as compared with balances aggregating $708,685.66 at December 31, 1929. Certain of these contracts are subject to cancellation on option of subscriber.

Sundry accounts, notes, securities, etc., include the following:

Sundry securities of other corporations	$ 702,520.37
Miscellaneous notes and accounts receivable	453,279.72
Advances to trustees-employees stock selling plan	411,073.16
Estimated value of discarded equipment	51,798.60
Total	$1,618,671.85

Stumpage (standing timber) valued on the books in the amount of $32,833,955.42, is shown by records as consisting of holdings in four southern states, California, Oregon and Washington, aggregating 9,075,221,095 feet, averaging $3.62 per thousand feet.

Timber land holdings, exclusive of timber thereon, farm lands, mill and town sites and suburban land are stated at the aggregate book value of $13,758,525.72, without appraisal by us.

Following is a summary of plant, buildings and equipment which are stated at the book values:

Buildings, manufacturing and logging equipment, stores, tenements, etc., of lumber and sash and door manufacturing divisions	$30,490,124.94
Yard and equipment of creosoting and glazing plants	303,108.97
Land, buildings and appurtenances comprising the sites and improvements of 104 retail yards located in the states of Missouri, Kansas, Oklahoma, Texas, New Mexico, Oregon and Washington	1,861,121.00
Railroad properties located in operating territories	6,398,841.21
Miscellaneous operating and rental buildings and equipment	3,673,652.63
Other equipment, etc.	299,476.09
	$43,026,324.84
Less allowance for depreciation	11,733,636.36
Total	$31,292,688.48

Depreciation has been provided on the books on basis approved by the Officers or Executive Committees of the Companies. Depreciation on lumber manufacturing plants is computed on basis of present timber holdings and estimated additional timber available to western mills, allowance being made for estimated salvage value.

Class "A" capital stock and Class "B" capital stock of The Long-Bell Lumber Corporation, consisting of 4,429 shares and 2,694 shares respectively, are carried on the books in the aggregate cost of $308,946.98. According to the records the Executive Committee authorized the purchase of 2,966 shares of Class "A" capital stock during the year in connection with adjustment of previous transactions. Cancellation of certain capital stock subscriptions during the year resulted in additions to treasury stock of 823 shares of Class "A" capital stock and 1,007 shares of Class "B" capital stock.

The stated liability of The Long-Bell Lumber Company and Subsidiaries on bonds and other deferred indebtedness was verified by the Trustees under the respective mortgages and by the holders of notes and land and timber purchase contracts

First Mortgage 6% Sinking Fund Gold Bonds of The Long-Bell Lumber Company consist of $10,000,000.00 Series "A" bonds dated July 1, 1922, $10,000,000.00 Series "B" bonds dated April 1, 1923, and $8,000,000.00 Series "C" bonds dated July 1, 1926, of which the aggregate amount of $20,666,200.00 was issued and outstanding at December 31, 1930. Bonds amounting to $7,333,800.00, including bonds retained and bonds purchased by the Company, have been retired to December 31, 1930.

Redemption of bonds outstanding at December 31, 1930, is required by provision of the mortgage as set forth in the following schedule:

1933	$ 420,800.00	1940	$ 2,200,000.00
1934	1,195,400.00	1941	2,200,000.00
1935	1,700,000.00	1942	2,200,000.00
1936	1,800,000.00	1943	1,400,000.00
1937	1,900,000.00	1944	600,000.00
1938	1,900,000.00	1945	600,000.00
1939	1,900,000.00	1946	650,000.00
		Total	$20,666,200.00

Maturities of land and timber purchase contracts and notes payable are summarized in the following schedule:

Timber Purchases:

	Total
1931	$ 500,767.56
1932	1,304,926.20
1933	1,572,750.00
1934	922,133.00
1935	767,733.00
1936	767,733.00
1937	767,733.00
1938	767,733.00
1939	920,755.40
1940	918,134.40
1941	918,134.40
1942	918,141.67
1943	918,134.40
	$11,964,809.03
Land Purchases	
Due serially	286,946.87
Total	$12,251,755.90

Other notes payable, etc. included in deferred obligations, consist of the following:

Notes payable for equipment purchases	$ 11,937.50
Notes payable—sundry	179,000.00
Other obligations maturing serially	156,128.61
Total	$347,066.11

Current liabilities reflect the liability of the companies on notes and accounts payable and accrued accounts disclosed by our examination as summarized in Balance Sheet.

We are advised by the Company that no tax will be shown by federal income tax return to be filed for the year 1930.

Bonds aggregating $4,068,000.00 guaranteed by The Long-Bell Lumber Company consist of bonds of the amount of $2,349,000.00 issued by Consolidated Diking District No. 1, organized under the laws of the State of Washington and bonds amounting to $1,719,000.00 issued by Local

Improvement Districts of the City of Longview, Washington. The diking district bonds were issued to take up warrants, together with interest thereon, which had been issued to The Long-Bell Lumber Company in payment for construction work performed. Bonds of local improvement districts of the City of Longview were issued for expenditures made for various local improvements in the City of Longview.

The diking district bonds mature serially over a period of eleven years and the local improvement district bonds over a period of eight years. Assessments payable in installments have been made by the diking and improvement districts against the land comprised in the respective districts as a means of providing funds for payments of bonds as they mature, together with interest thereon. The proportion of such assessments against land of The Long-Bell Lumber Company and Subsidiaries is set up on the books as it accrues, and the stated liabilities as of December 31, 1930, include accrued assessments amounting to $410,992.21.

Reserves stated in Balance Sheet include provision for possible shrinkage in land and real estate contracts, unrealized profit on sales of southern farm lands, provision for obligations to improve certain properties that have been sold, possible shrinkage in items shown under other assets and for general contingencies.

There is submitted herewith statement showing briefly the transactions affecting the consolidated capital stock and surplus account during the year 1930.

Carrying charges on timber, land and real estate holdings for the year ended December 31, 1930, consisting of interest amounting to $681,710.53 on timber purchase obligations, timber taxes $241,082.56, interest included in diking and improvement districts accrued assessments $197,013.63, and general taxes $92,773.11 on certain property have been capitalized.

Subject to the foregoing, We Hereby Certify, that we have examined the accounts pertaining to the assets and liabilities of The Long-Bell Lumber Corporation, Kansas City, Missouri, and the aforenamed subsidiaries as of December 31, 1930, and that, in our opinion, based upon the records examined and information obtained by us, the annexed Consolidated Balance Sheet reflects the financial condition of the combined companies at that date.

Ernst & Ernst.

Consolidated Capital Stock and Surplus Account
The Long-Bell Lumber Corporation
and Subsidiaries

Year ended December 31, 1930

Capital Stock and Surplus—December 31, 1929			
The Long-Bell Lumber Corporation and its holdings			$59,571,645.54
Minority shareholders' interest in subsidiaries			597,432.36
			$60,169,077.90
Deductions			
Profit for the year before deducting depletion, depreciation and interest charges		$1,965,822.46	
Depletion	$1,889,091.56		
Depreciation	1,202,667.72		
Operating interest charges	2,010,515.19	5,102,274.47	
		$3,136,452.01	
Provision for inventory shrinkage		600,000.00	
Provision for contingencies		450,000.00	$4,186,452.01
Additions			
Credit arising through purchase and redemption of Company's bonds		$ 705,465.13	
Cancellation of reserve provided in previous years for accruals under officers' profit sharing contracts		619,084.00	
Adjustment of federal taxes of prior years and sundry credits		196,190.89	1,520,740.02
Net Deduction for Year			2,665,711.99
			$57,503,365.91
Capital Stock and Surplus—December 31, 1930			
The Long-Bell Lumber Corporation and its holdings			$56,937,805.30
Minority shareholders' interest in subsidiaries			565,560.61
			$57,503,365.91

Consolidated Balance Sheet
The Long-Bell Lumber Corporation and Subsidiaries
December 31, 1930

Assets

Current			
Cash:			
On deposit subject to syndicate loan agreement	$2,098,738.82*		
Other	574,102.54	$ 2,672,840.86	
Notes receivable	$ 407,888.21		
Accounts receivable	2,032,664.40	$2,440,552.61	
Less allowance for losses	143,417.45	2,297,135.16	
Inventories—lumber, logs, millwork, supplies, etc.		7,986,191.68	
Cash value of life insurance		364,015.71	$ 13,320,183.41
Other Assets			
Sinking fund deposit accounts		$ 690,555.10	
Balances due on timber sales contracts		6,024,330.35	
Land and real estate sales contracts and notes		1,449,425.27	
Unpaid capital stock subscriptions of officers and employees		693,490.16	
Sundry accounts, notes, securities, etc.		1,618,671.85	10,476,472.73
Stumpage (standing timber)			32,833,955.42
Land—at book value			13,758,525.72
Plant, Buildings and Equipment			
Manufacturing plants, retail yards, railroads, creosoting plants, rental property, etc.		$43,026,324.84	
Less allowance for depreciation		11,733,636.36	31,292,688.48
Treasury Stock—at cost			308,946.98
Class "A" 4,429 shares and Class "B" 2,694 shares			
Diking District and Improvement District Bonds			
Sold and guaranteed—per contra			4,068,000.00
Deferred			
Deferred expenses, unamortized discounts, etc.			2,825,032.23

*Cash on deposit in the amount of $2,098,738.32 and notes payable amounting to $5,400,000.00 are subject to the provisions of syndicate loan agreement dated November 1, 1930.

(Note) The Companies were reported as contingently liable as endorsers on customers' acceptances and drafts discounted in the amount of $154,574.20 and on notes payable of $2,600.00.

At December 31, 1930, dividends on Class "A" stock of The Long-Bell Lumber Corporation had been paid to September 30, 1927.

This Balance Sheet is subject to the comments contained in our "Certificate," included in and made a part of this report.

$108,883,804.97

Consolidated Balance Sheet

The Long-Bell Lumber Corporation and Subsidiaries
December 31, 1930

Liabilities

Current			
Notes payable:			
To banks — partly secured	$5,400,000.00*		
Sundry and individual	216,129.99	$ 5,616,129.99	
Accounts payable:			
For purchases, pay rolls, expenses, etc.	$ 524,265.08		
Officers', employees' and other sundry accounts	215,613.34	739,878.42	
Accrued interest and general taxes		2,045,019.09	$ 8,401,027.50
Reserves			
For land and real estate sales contracts and notes		$ 300,406.26	
For other purposes and contingencies		1,071,983.29	1,372,389.55
Bonds and Other Deferred Indebtedness			
First mortgage 6% sinking fund gold bonds of The Long-Bell Lumber Company:			
Series "A" maturing serially to July 1, 1942		$ 7,420,800.00	
Series "B" maturing serially to April 1, 1943		7,360,100.00	
Series "C" maturing serially to August 1, 1946		5,885,300.00	
Convertible five year 6% collateral gold notes of The Long-Bell Lumber Company maturing December 1, 1931		3,245,400.00	
First mortgage 6% gold bond of Longview, Portland & Northern Railway Company, maturing July 1, 1945	$3,250,000.00		
Less owned by The Long-Bell Lumber Company and deposited as collateral on convertible five year 6% collateral gold notes	3,245,400.00	4,600.00	
First mortgage notes maturing serially to April 12, 1950—Weed Logging Railroad Company		1,000,000.00	
Superior Oak Flooring Company bonds assumed—maturing June 1, 1931		24,000.00	
Timber and land purchase obligations secured by liens		12,251,755.90	
Other notes payable, etc.		347,066.11	
		$37,539,022.01	

Above obligations maturing subsequent to one year	$33,695,697.15	
Above obligations maturing within one year	3,843,324.86	37,539,022.01
Diking District and Improvement District Bonds Guaranteed—per contra		4,068,000.00
Minority Shareholders' Interest in Subsidiary Companies		565,560.61
Capital		
Capital stock	$53,427,306.04	
Class "A" common stock of no par value, authorized 750,000 shares—issued 593,921 shares.		
Class "B" common stock of no par value, authorized 550,000 shares—issued 542,569 shares.		
Surplus	3,510,499.26	56,937,805.30
		$108,883,804.97

Consolidated Balance Sheet

Long-Bell Lumber Sales Corporation and Subsidiaries

December 31, 1930

Assets

Current			
Cash:			
On deposit subject to syndicate loan agreement	$2,025,238.68*		
Other	556,777.94	$2,582,016.62	
Notes receivable	$ 407,598.21		
Accounts receivable	1,977,495.09	$2,385,093.30	
Less allowance for losses	142,534.95	2,242,558.35	
Inventories—lumber, logs, millwork, supplies, etc.		7,938,526.05	
Cash value of life insurance		364,015.71	$13,127,116.73
Due from Affiliated Companies			8,657.76
Other Assets			
Land and real estate sales contracts and notes	$1,033,462.25		
Sundry securities, notes and accounts		897,702.01	1,931,164.26
Stumpage (standing timber)			812,298.36
Land—at book value			6,938,234.00
Plant, Buildings and Equipment			
Manufacturing plants, retail yards, railroads, sash and door warehouses, etc.	$7,477,103.66		
Less allowance for depreciation		3,171,569.68	4,305,533.98
Deferred Charges			1,171,331.10
			$28,294,336.19

*Cash on deposit in the amount of $2,025,238.68 and notes payable amounting to $5,400,000.00 are subject to the provisions of syndicate loan agreement dated November 1, 1930.

Consolidated Balance Sheet

Long-Bell Lumber Sales Corporation and Subsidiaries
December 31, 1930

Liabilities

Current			
Notes payable:			
To banks—partly secured	$5,400,000.00*		
Sundry and individual...	216,129.99	$ 5,616,129.99	
Accounts payable:			
For purchases, pay rolls, expenses, etc.	$ 466,502.55		
Officers', employees' and other sundry accounts.	209,872.97	676,375.52	
Accrued interest and general taxes.....		624,332.81	$ 6,916,838.3
Due to Affiliated Companies			
The Long-Bell Lumber Company.....		$ 779,142.74	
Other affiliated companies.....		456.77	779,599.5
Reserves			
For land and real estate sales contracts and notes		$ 275,406.26	
For miscellaneous purposes.....		205,345.96	480,752.2
Bonds and Other Deferred Indebtedness			
Superior Oak Flooring Company bonds assumed, maturing June 1, 1931.....		$ 24,000.00	
Timber and land purchase obligations secured by liens.....		82,549.94	
Other obligations		80,124.65	
		$ 186,674.59	
Above obligations maturing subsequent to one year		$ 107,753.62	
Above obligations maturing within one year		78,920.97	186,674.5
Minority Shareholders' Interest in Subsidiary Company			10,333.4
Capital			
Capital stock authorized and issued (100% owned by The Long-Bell Lumber Company)		$ 1,000,000.00	
Surplus:			
Paid in.....	$19,793,336.60		
Less operating deficit.....	873,198.46	18,920,138.14	19,920,138.1
			$28,294,336.1

(Note) The Companies were reported as contingently liable as endorser on customers' acceptances and drafts discounted in the amount of $154,574.20 and on notes payable in the amount of $2,600.00.

This Balance Sheet is subject to the comments contained in our "Certificate," included in and made a part of this report.

DEFENDANT'S EXHIBIT 7.

Balance Sheet

The Long-Bell Lumber Corporation and Subsidiary Companies

June 30, 1931

Assets

Current:			
Cash		$ 1,913,890.01	
Notes receivable	$ 429,852.02		
Accounts receivable	2,474,250.06		
	$2,904,102.08		
Less allowance for losses	141,567.54	2,762,534.54	
Inventories—Lumber, Logs, Millwork, etc.		7,252,588.58	
Cash value of life insurance		364,015.71	$ 12,293,028.84
Other Assets:			
Land and real estate sales contracts and notes		$ 1,370,986.09	
Bond sinking fund		166,633.59	
Sundry accounts, notes, securities, etc.		2,211,682.19	
Balance due on timber sales agreement		6,021,107.57	9,770,409.44
Stumpage (Standing Timber)			32,476,053.75
Land:			
Timber land, farm and ranch lands, townsite and miscellaneous real estate			14,111,021.28
Plant, Buildings and Equipment:			
Manufacturing, creosoting and glazing plants, sash and door and service station warehouses, retail yards and miscellaneous improvements		$42,788,519.54	
Less reserve for depreciation		12,142,003.83	30,646,515.71
Treasury Stock—at cost			594,293.13
Bonds of The Long-Bell Lumber Company—at cost			4,555.56
Diking District and Local Improvement Dist. Bonds:			
Sold and guaranteed—per contra			4,035,000.00
Deferred:			
Unamortized bond discount and expense		$ 1,500,806.24	
Other		1,050,305.06	2,551,111.30
			$106,481,989.01

DEFENDANT'S EXHIBIT 7.

Balance Sheet

The Long-Bell Lumber Corporation and Subsidiary Companies

June 30, 1931

Liabilities

Current:			
Notes payable:			
To banks for money borrowed	$5,400,000.00		
Sundry and individual	270,583.80	$5,670,583.80	
Accounts payable:			
For purchases, expenses, pay rolls, etc.		710,265.77	
Accrued expenses		2,250,844.16	$ 8,631,693.73
Reserves:			
For land and real estate contracts and notes		$ 211,940.17	
For contingencies		825,000.00	
Other purposes		325,978.57	1,362,918.74
Bonds and Other Deferred Indebtedness:			
The Long-Bell Lumber Company First Mortgage 6% Sinking Fund Gold Bonds:			
Series "A" due serially to July 1, 1942		$ 7,291,500.00	
Series "B" due serially to April 1, 1946		7,137,500.00	
Series "C" due serially to August 1, 1946		5,787,500.00	
The Long-Bell Lumber Company 5-year 6% Collateral Gold Notes maturing December 1, 1931		3,245,400.00	
Longview, Portland & Northern Railway Company 6% Sinking Fund Gold Bonds due July 1, 1945	$3,250,000.00		
Less owned by The Long-Bell Lumber Company	3,245,400.00	4,600.00	
Timber, land and plant purchase contracts		12,158,613.21	
Other notes payable		1,235,152.15	36,860,265.36
Above obligations maturing subsequent to 1 year		$32,909,479.33	
Above obligations (other than Gold Notes) maturing within one year		705,386.03	
Diking District and Local Improvement District Bonds:			
Sold and guaranteed—per contra			4,035,000.00
Minority Shareholders' Interest in Subsidiary Companies			551,634.36
Capital Stock and Surplus June 30, 1931			55,040,476.82
			$106,481,989.01

DEFENDANT'S EXHIBIT 7.

Combined Income, Capital Stock and Surplus Account

The Long-Bell Lumber Corporation and Subsidiary Companies.

Consolidated Income Account

Profit for six months ending June 30, 1931 before deducting Depletion, Depreciation and Operating Interest charges		$ 684,674.89
Less Depletion	$ 806,242.68	
Depreciation	496,506.63	
Operating Interest Charges	908,818.28	2,211,567.59
		$ 1,526,892.70
Inventory adjustment June 30, 1931		400,000.00
Net Loss for the six months ending June 30, 1931		$ 1,926,892.70

Consolidated Capital Stock and Surplus

Capital Stock and Surplus December 31, 1930 as per the Books of the Long-Bell Lumber Corporation and Subsidiary Companies	$57,080,611.94	
Minority Shareholders Int. in Subsidiaries	567,092.58	
		$57,647,704.52
Deductions:		
Loss for the six months ending June 30, 1931 as per income account	$ 1,926,892.70	
Adjustment to make books accord with Ernst & Ernst Audit Report	133,588.00	
	$ 2,060,480.70	
Less:		
Sundry surplus credits	4,887.36	
		2,055,593.34
Capital Stock and Surplus June 30, 1931 as per the books of The Long-Bell Lumber Corporation and Subsidiary Companies	$55,040,476.82	
Minority Shareholders Int. in Subsidiaries	551,634.36	$55,592,111.18

DEFENDANT'S EXHIBIT 9

(Letterhead of Equitable Life Insurance Company of Iowa)

Des Moines June 22, 1931.

Halsey, Stuart & Company,
201 So. La Salle St.,
Chicago, Ill.

Gentlemen:

As you are aware, you have sold this Company a very substantial amount of the Local Improvement District Bonds of Longview, Washington, and in connection therewith, we would appreciate your supplying us with certain information.

In the first place, we would like to know the percentage of the number of lots sold by the Longview Company to individuals that were sold either with the assessments paid or with the guarantee that the assessments would be paid.

Through your representative, you have advised us that 38% of the taxes of the City of Longview are paid by the Long Bell Lumber Company and subsidiaries. Does this percentage apply only to the general taxes or is it also the percentage of special assessment taxes paid by the Lumber Company or its subsidiaries? If it is not, can you furnish us with the percentage of the special assessments that are paid by the Long Bell Lumber Company or it subsidiaries?

It is our understanding that special assessment taxes, as well as general taxes, are due and payable semi-annually on May 15th and November 15th each year. This year, on May 15th the special assessment taxes payable by the Long Bell Lumber Company and its subsidiaries were not paid on District #11. If these taxes had been paid, a considerable number of the outstanding bonds in this district would, of course, have been retired by these taxes. Is this not essentially a technical default? Inasmuch as all of these bonds are unconditionally guaranteed both as to payment of principal and interest by the Long Bell Lumber Company, cannot some action be taken to compel the Lumber Company to pay these assessments

as they fall due rather than to let them pyramid year after year? It would appear to us that to say the least the Lumber Company is not acting in good faith and naturally we wish to know when these assessments will be paid by the Lumber Company so that the bonds can be retired in accordance with the regular schedule.

Very truly yours,
(Signed) F. W. Hubbell,
Vice President & Treas.

FWH:RV

DEFENDANT'S EXHIBIT 10

Sixty-fourth Annual Statement
December 31, 1930
of the
Equitable Life of Iowa
Home Office, Des Moines
Des Moines, Iowa, January 22, 1931.

To the Policyholders of the Equitable Life Insurance Company of Iowa:

The business of life insurance has again proven its remarkable strength as a stabilizing factor in our country in the face of conditions which have tested all branches of business and industry in that the outstanding life insurance companies have maintained their dependability for returns to their patrons.

Our Company, in particular, has a record which we may look upon with extreme satisfaction because within the past year, its financial strength has been again increased and its sound condition has made possible the continuance of a dividend scale to policyholders, which results in the lowest net cost in the Company's history.

The total Premium Income for the year was $19,610,112. The policyholders left with the Company under Supplementary Contracts $1,209,935, a considerable increase over the preceding years, showing a growing appreciation of the valuable service which the Company can render under these contracts which not only provide a good income but guarantee the integrity of the principal to the beneficiaries.

Dividends left at interest amounted to $1,076,345. Interest and other items of investment income amounted to $5,657,267, making the total income for the year $27,553,659.

Payments to the Beneficiaries of deceased policyholders amounted to $3,163,786 and our Disability Benefits provided payments of $205,834. Other payments to living policyholders for matured endowments, annuities and surrendered policies amounted to $3,650,659 and we paid in dividends to policyholders $4,288,672 which is considerably more than a million dollars in excess of the amount required for death claims—a record similar to that which has been maintained for more than ten years. The total paid to holders of various types of contracts was over twelve and a quarter millions of dollars. The amount paid out for taxes and state fees was $554,081. Outside of this item, the aggregate of operating expenses was considerably less than in the preceding year.

The Income saved was in excess of ten million dollars which was carefully invested. All of the Company's investments are carried on the books at a conservative basis of valuation. The total Admitted Assets, according to the stringent rules of Insurance Departments, amount to $118,702,147.

According to the Company's sound and safe policy of accounting, every anticipated demand for obligations which may have to be met are included in the Liabilities. The sum of these Liabilities as shown on the next page is $112,669,410. This leaves in excess over these Liabilities, a total of Capital, Surplus and Special Funds amounting to $6,032,747 held for the protection of policyholders to guarantee the strict fulfillment of all contracts and other obligations.

The new investments were placed at a somewhat higher rate of return than in preceding years so that on the whole, our Assets are on a slightly higher basis of earning. Although the new insurance issued was not as great, resulting in a lesser gain than in 1929, the terminations were on a more favorable basis, particularly the policies terminated by death which showed a lower loss ratio than the preceding year. Of the new insurance issued, more than 41.2% was placed upon former policyholders, showing their confidence and appreciation of the returns received and service rendered by the Company in their experience on former insurance taken with us.

The Company's administrative policy, noted for its

high character, was largely inspired by its Founder, Mr. Frederick M. Hubell, who was the holder of policy No. 1, and until the latter years of his life, was active in the administration of the Company with constant care for the interests of the policyholders. In Mr. Hubbell's estimate, a good name was more to be desired than riches. His passing in 1930 occurred during his 92nd year.

Mr. Hubbell laid the foundations upon which our Company has been built in such a way that its policyholders may feel assured that any trust imposed in this Company will be faithfully performed. Its record continues to show adherence of sound principles of administration which some have in recent years thought to be old fashioned, but which in times of distress are extolled and relied upon. Conservatism and integrity with the keen sense of obligation of trusteeship are characteristic of our organization. On these principles we have confidence that the Company will continue to prosper and to this end its entire staff is harmoniously putting forth its effort.

H. S. Nollen,
President.

Annual Statement

December 31, 1930

Resources

1—Real Estate	$ 5,622,339
Includes home office building and site	
2—Mortgage Loans	63,255,786
Loans secured by First Mortgages only, on real estate worth over $196,000,000.	
3—Policy Loans	21,506,376
Loans made to policy holders.	
4—Bonds	21,400,091
5—Other Assets	6,917,555
Include deposits in banks, interest accrued and premiums due and deferred.	
Total Admitted Assets	$118,702,147

620

Liabilities

1—Full Level Premium Reserves of	$100,763,713
To meet this obligation the Company has set aside and deposited with the State of Iowa, approved securities in the amount of $103,417,796 being $2,654,083 in excess of legal requirements.	
2—Dividends Apportioned to Policyholders for 1931	4,463,858
3—Dividends at Interest, Premiums Paid in Advance	6,573,242
And other sums held to the credit of policyholders.	
4—Taxes Payable in 1931	560,937
5—Other Liabilities	307,660
Total Financial Obligations	$112,669,410
Leaving an Excess of Surplus and Capital Stock for the Additional Protection of Policyholders	6,032,737
	$118,702,147

DEFENDANT'S EXHIBIT 11.

June 23, 1931.

Mr. F. W. Hubbell,
Vice President and Treasurer,
Equitable Life Insurance Company
of Iowa,
Des Moines, Iowa.

Dear Mr. Hubbell:

We wish to acknowledge receipt of your letter, requesting additional information concerning your Longview, Washington, Improvement District Bonds.

Inasmuch as it will be necessary for us to obtain a portion of the information you request from officials in Longview, it will probably be a week or so before we can write you fully regarding this situation.

Very truly yours,

CME:EA
621

DEFENDANT'S EXHIBIT 12.

July 7, 1931.

The Equitable Life Insurance Company,
Des Moines,
Iowa.

Attention—Mr. F. W. Hubbell,
Vice-President and Treasurer

Gentlemen:

We have not yet received all of the data you have asked us to obtain with reference to Longview, Washington, but as soon as it is received we shall forward it to you very promptly.

In your communication of June 22 you raise a point regarding a technical default on the bonds of L. I. D. No. 11. The law under which these improvement district bonds are issued provides that they shall become due on or before twelve years from their date of issuance and be payable out of special assessments collected in ten annual installments and as installments are paid the funds may be used to retire bonds in their numerical order at the option of the issuing district. Under these circumstances it is conceivable that the bonds might run for the full twelve years and the failure of the district to exercise its optional privilege would not result in a default.

It is true that District No. 11 has not called any bonds this year but as taxes became due and payable on May 15 it is quite likely that such funds that were available had not been apportioned to the various districts in time for this particular district to announce a call of bonds on the twenty-seventh or 12 days after the delinquent date.

We assume that to some extent, at least, general conditions in Longview were very similar to those all through the country because of which taxpayers waited until the last moment to pay taxes. It was for the reason that taxpayers can pay their benefit taxes in ten annual installments that we designated the bonds as optional approximately one-tenth each year. It has been the experience, moreover, of these local improvement districts that their bonds would be retired in approximately that manner, although the actual maturity under the authority of issuance is twelve years from date.

Very truly yours,

RES:MES.
CC Mr. Ettinger, Office.

DEFENDANT'S EXHIBIT 13.

Chicago Office.
May 27, 1931.

Mr. B. C. Kelley,
Chicago Office.

Regarding your inquiry about the percentage of property owned by the Long Bell Lumber Company and subsidiaries in the City of Longview, the following paragraph taken from a letter dated May 11, 1931, from Mr. Alex Hay, Tax Agent, explains the situation:

"The assessed value of the City of Longview for all classes of property amounts to $4,912,040.00. The assessed valuation on property of the Long-Bell Lumber Company and subsidiaries is $1,877,029.00, leaving a balance for others of $3,035,011.00. In other words, Long-Bell and Subsidiaries are cast for 38% of the taxes for the City of Longview."

DEFENDANT'S EXHIBIT 14.

July 8, 1931.

Miss Frances Kennedy, Treasurer,
City of Longview,
Longview, Washington.

Dear Miss Kennedy:

I really must apologize for not writing you sooner to thank you for your many courtesies to me while I was in Longview, and especially for taking me to the train in Ranier. I have just returned home from a rather extensive trip and have been simply swamped.

I am writing at this time to inquire if there is any more information available as to whether or not the Long-Bell Lumber Company is going to pay their Assessments and what the prospects are for our December call.

I am also a little 'hazy' on one point that you explained to me. I believe you said that in certain districts the Long-Bell Company had made arrangements so that its employees could buy houses on the installment plan with

the Assessments paid. I would like very much to be accurate on this point and wonder if such is the case.

Hoping that you are having cooler weather out there than we are here in the Middle West, I am,

Very cordially yours,

James H. Windsor.

JHW:SB

DEFENDANT'S EXHIBIT 15.

(Letterhead of The City of Longview, Longview, Washington.)

July 13th, 1931.

Mr. James H. Windsor,
C/O Equitable Life Insurance Company,
Des Moines, Iowa.

Dear Mr. Windsor:

I have your letter of July 8th with reference to the assessments to be paid by the Long-Bell Lumber Company.

At this time I am not able to give you any advance information on the future payment of the assessments by them. Up to this time they have continued to pay in the same manner as I explained to you in regard to District #11. The I. C. C. has approved the sale of the railroad and I can see no reason why the assessments will not be paid up in the very near future.

In regard to the sales contracts which were made by the company to parties, not necessarily their own employees, in which they contracted to pay the assessments. These particular properties are in fine shape as far as the assessments are concerned. They have kept these paid right up to date.

If at any time I can be of service to you, please let me know.

Kindest personal regards,

(signed) Frances Kennedy

City Treasurer.

FK:S

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DEFENDANT'S EXHIBIT 17.

(Letterhead of Equitable Life Insurance Company of Iowa.)

Des Moines, June 7, 1934.

C. T. MacNeille, Vice President
Halsey, Stuart & Co.,
201 So. LaSalle St.
Chicago, Illinois.

Dear Mr. MacNeille:

Your letter of June 4th addressed to Mr. Delander and the writer has been duly received and has been brought before our Finance Committee for discussion and I have been instructed to advise you as follows:

(1) This Company is anxious to have affected a successful reorganization of the Long-Bell Lumber Company along the lines suggested in the outline of the permanent plan submitted by Halsey-Stuart & Company under date of March 30, 1933.

(2) In the event of the successful consummation of such a plan or of a plan that does not vary materially, this Company will waive the guarantee of the Long-Bell Lumber Company and the L. I. D. Bonds owned by it, subject to the following conditions and qualifications:

(a) There be substituted in lieu of the present guarantee, an unconditional guarantee both as to payment of interest and principal of our bonds, to be made by either the two present realty holding corporations, namely, the Longview Company and the Longview Suburban Company, or by a new corporation to take over the assets of these two companies. The guarantee shall, of course, come ahead of any debts or obligations that these companies may now have to parent companies owning their stock. In other words, the present real estate holdings of the Long-Bell Lumber Company shall be pledged free and clear of all liens, except special assessments and taxes to the ultimate payment of the L. I. D. Bonds and the Diking District Bonds.

(b) The consent of the L. I. D. bondholders and the Diking District bondholders must, of course, be secured either by the Long-Bell Lumber Company or its reorganization managers, and presuming that it would be impos-

sible to get the unanimous consent to the bondholders, very likely the municipal bankruptcy bill just passed by Congress could probably be used.

(c) Although we have a general idea as to the properties owned by the Long-Bell Lumber Companies in Longview, the acceptance of the guarantee would be subject to the approval by our Company after a personal inspection to take place within the next thirty or forty days.

(d) Active sales efforts to dispose of unsold lands and properties owned by the realty holding companies should be resumed and prices set on these properties at such a figure that they will be attractive purchases, as outlined by Mr. Nelson at our conferences last week.

(e) As suggested by Mr. MacNeille, it is essential that cash coming into the treasury of either the Longview Company or the Longview Suburban Company should be retained by those respective companies.

3. In order to facilitate the collection of assessments, this Company would be willing to extend the maturity of our bonds for a period of ten years from their present maturity dates, and would, in addition, be willing to accept interest at a reduced rate during the first five years. We would suggest that the rate be 3% for three years, 4% for the next two years of the five-year period, and then, of course, the contract rate should obtain.

(a) It would, of course, be understood that the consent of other L. I. D. bondholders must be obtained by the Long-Bell Lumber Company and that a similar program be followed by the Diking District bondholders.

(b) It is assumed that this extension of maturity and reduction of interest can be accomplished in accordance with the laws of the State of Washington, or in the event this is impossible under present laws, that legislation favorable to such extension can be secured at the next session of the legislature of the State of Washington.

Very truly yours,
Equitable Life Insurance Company of Iowa
By F. W. Hubbell
Vice President & Treasurer.

FWH:RV
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DEFENDANT'S EXHIBIT 18.

(Letterhead of Equitable Life Insurance Company of Iowa)

Des Moines, June 8, 1934

C. T. MacNeille, Vice President
Halsey, Stuart & Co.,
201 So. LaSalle St.,
Chicago, Illinois.

Dear Mr. MacNeille:

You will find attached letter dated June 7th which I think should be satisfactory to you in discussing the proposed reorganization of the Long Bell Lumber Company with the banks holding their notes.

While, of course, it has been necessary to qualify our agreement to waive the guarantee, I think that the qualifications are no greater than the qualifications attached to agreements already made with other creditors. There would, of course, be no point to waive our guarantee unless a successful reorganization of the Long Bell Lumber Company can take place.

I note that the President has signed the Corporation Bankruptcy Bill so this should be helpful in this instance.

In going over your long letter of June the 4th, I have noticed your recommendation in paragraph 8, that possibly it would be better to have interest funds accumulate in the hands of someone other than the City Treasurer. I do not see just what could be gained by this change. The funds, of course, collected are ear-marked as interest on the bonds and I am quite in agreement with you that no interest should be distributed until monies received are sufficient to pay an entire year's interest on the individual district for which the assessment is collected. I do not know whether you had in mind that possibly some clever bondholder might mandamus the Treasurer to pay over these funds on presentation of interest coupons. It would appear to me that if a bondholder could secure payment in this manner, he could, in the same manner, secure payment from a corporate trustee. Perhaps I am in error in this.

I presume that as soon as the information is received from Longview, as requested in Mr. Hay's wire, set forth in paragraph 7 of your letter, a copy of this will be sent to us.

Just at the present, I do not think of any further information that is required but I do believe it would be advisable to have prepared at Longview, so that it would be available upon our trip out there, a map showing the holdings of the Longview Company and the Longview Suburban Company, together with information as to delinquent assessments against each individual piece of property. If the list which was given to us Friday morning by Mr. Nelson, showing various properties with present base price, total original, etc., is complete, the delinquent assessments and taxes can readily be secured from that list and placed on the map.

Will be pleased to hear from you, after you have interviewed the banks, as to progress in your problems of reorganization.

With kind personal regards,

Very truly yours,

(Signed) F. W. Hubbell,

Vice President & Treas.

FWH:RV

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Halsey, Stuart & Co., Inc.

DEFENDANT'S EXHIBIT 19

Bonds on Hand — Taxable Securities — At Beginning of Business May 3, 1930

Special Notes	Name of Issue	Interest Rate	Interest Dates	Maturity	Amounts Denominations $1,000	$500	$100	Price	Yield	Code	Discounts Bks.	Dlrs.
	Allied Owners Corp.	6	J & J	1- 1-32	7		1	98.38	7.00	i.	.UK	.UK
	Serial G. Deb.			33	34			97.53	7.00	i.KE	.UK	.UK
	Except Mich.			34	21			96.75	7.00	C.	.UK	.UK
				35	8			96.02	7.00	C.	.UK	.UK
				36	6			95.33	7.00	C.KE	.UK	.UK
				37	11			94.69	7.00	C.KE	.UK	.UK
				38	7		1	94.09	7.00	C.KE	.UK	.UK
				39	14		1	93.53	7.00	C.KE	.UK	.UK
				40	2		2	93.02	7.00	C.KE	.UK	.UK
	American Service Co. 1st Mtge. G. Bonds with Warrants.	6	J & J	1- 1-44	Spec.		31	86.00	7.65	C.KE	.UK	.UK
	American Service Co. Conv. Gold Notes.	7	M & S	9- 1-32	22		1	99.50	7.22	C.	.UK	.UK
T.	Associated Gas & Electric Co. Conv. Gold Deb.	5	F & A	2- 1-50	Spec.			89.00	5.95	i.	.UK	
T.	Berlin City Electric Co. Deb.	6	A & O	4- 1-55	Spec.			90.50	6.80	i.KE	.UK	.UK
T.	Butler Brothers	5	F & A	2- 1-36	10			95.02	6.00	C.KE	.UK	.UK
	Serial Gold Deb.			37	Spec.			94.35	6.00	C.KE	.UK	.UK
	Dated 12-15-29. 1st coupon 8-1-30.			38	Spec.			93.72	6.00	C.KE	.UK	.UK
				39	Spec.			93.12	6.00	C.KE	.UK	.UK
				40	50		50	92.56	6.00	C.KE	.UK	.UK
				41	Spec.			92.03	6.00	C.KE	.UK	.UK
				42	Spec.			91.53	6.00	C.KE	.UK	.UK
				43	Spec.			91.06	6.00	C.KE	.UK	.UK
				44	Spec.			90.62	6.00	C.KE	.UK	.UK

	Central Illinois Public Service Co..... 1st Mtge.	5	M & N	11- 1-68	16				100.00	5.00	U.KE	.UK		
	Central Indiana Power Co..... 1st Mtge. & Coll. Tr.	6	J & J	7- 1-47	18	10	2		102.50	5.77	U.KE	.UK		
A.	Central Power & Light Co..... 1st Mtge. Except Ky.	5	F & A	8- 1-56	11				97.00	5.20	U.KE	.UK		
	Central West Public Service Co..... 1st Lien Coll.	5½	M & N	11- 1-56	Spec.	18			90.00	6.27	C.	.UK	.UK	
	Central West Public Service Co..... Gold Notes.	7	F & A	8- 1-32	7				100.00	7.00	U.	.UK		
T.	Chicago Herald & Examiner..... (Illinois Publishing & Printing Co.) Secured G. Deb.	6½	M & S	3- 1-50	Spec.	Spec.			100.00	6.50	K.	.UK	.UK	
	Chicago, North Shore & Milw. R. R. Co.... Gold Notes. Dated 2-1-30.	6	J & J	1- 1-31	Spec.				99.65	6.50	Q.KE	.UK	.UK	
	Chicago, North Shore & Milw. R. R. Co.... Gold Notes.	6	A & O	4- 1-32	Spec.				98.16	7.00	C.	.UK	.UK	
	Chicago, North Shore & Milw. R. R. Co.... Equip. Tr. Ctfs. Series G.	6	J & D	12- 1-42	25				98.67	6.15	i.KE	.UK	.UK	
					43	65			99.07	6.10	i.KE	.UK	.UK	
					44	28			99.52	6.05	i.KE	.UK	.UK	
	Chicago, North Shore & Milw. R. R. Co.... 1st & Ref. Mtge.	6	J & J	1- 1-55	6	18	37		81.00	7.73	C.	.UK	.UK	
	Cities Service Co..... Gold Deb., Ex. Warrants.	5	M & N	11- 1-63	Spec.				Mkt.	6.05	U.KE			
	Cities Service Co..... Gold Deb., Ex Warrants.	5	M & S	3- 1-69	Spec.				Mkt.	6.00	U.KE			

Halsey, Stuart & Co., Inc.

DEFENDANT'S EXHIBIT 19

Bonds on Hand — Taxable Securities — At Beginning of Business May 3, 1930

Special Notes	Name of Issue	Rate	Interest Dates	Maturity	Amounts Denominations $1,000	$500	$100	Price	Yield	Code	Discounts Bks.	Dlrs.
	Cities Service Power & Light Co. Gold Deb.	5½	J & D	6–1–49	11			Mkt.	6.30	i.		
*	Except Ore.											
T.	East St. Louis & Interurban Water Co. 1st Mtge. Series D.	5	F & A	2–1–60	81	4		94.00	5.40	U.KE	.UK	
	Florida Power Corp. 1st Mtge.	5½	J & J	1–1–79	2	12		91.00	6.08	i.KE	.UK	
*	Except Ga.											
A.	Fox Film Corp. Secured Notes.	6	A&O15	4–15–31	Spec.			100.00	6.00	U.KE	.UK	.UK
	Permanents expected about 5–8–30.											
	Galveston Wharf Co. Ref. Mtge. Series B.	5½	J & J	7–1–54	Spec.			100.00	5.50	i.	.UK	.UK
	Great Lakes Paper Co. 1st Mtge. S. F.	6	M & S	3–1–50	7		55	84.00	7.57	C.	.UK	.UK
	Hearst Magazines, Inc. Serial G. Deb.	6	M & S	3–1–36	7			97.59	6.50	K.	.UK	.UK
				37	12			97.24	6.50	K.	.UK	.UK
				38	8			96.93	6.50	K.	.UK	.UK
	Hearst Publications, Inc. 1st Mtge. Coll. Trust.	6¼	M & N	11–1–38	2			98.39	6.50	K.	.UK	.UK
				42	1	1		97.88	6.50	K.	.UK	.UK
*	Except Iowa, Ga.			47	5			97.38	6.50	K.	.UK	.UK

Defendant's Exhibit 19.

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	Houston Lighting & Power Co. 1st Lien & Ref. Mtge. Except Ky.	5	M & S	3- 1-53	2		5	101.50	4.90	Q.KE	.UK		
	Illinois Power & Light Corp. 1st & Ref. Mtge.	5	J & D	12- 1-56	32			95.00	5.35	U.KE	.UK		
	Illinois Power & Light Corp. 1st & Ref. Mtge.	6	A & O	4- 1-53	Spec.	10	10	103.50	5.72	i.	.UK		
	Indiana Electric Corp. 1st & Ref. Mtge. Series C.	5	M & S	3- 1-51	28	3		92.50	5.60	i.	.UK		
	Indiana Electric Corp. 1st Mtge.	6	M & N	11- 1-47	29	10		102.50	5.77	U.KE	.UK		
	Indiana Electric Corp. 1st Mtge.	6½	F & A	8- 1-53	2	4		105.50	6.06	U.KE	.UK		
	Indiana Service Co. 1st Lien & Ref. Mtge.	5	F & A	2- 1-63	33	8	4	91.50	5.57	U.KE	.UK		
	Interstate Public Service Co. 1st Mtge. & Ref.	4½	M & S	3- 1-58	7	6	6	93.00	4.97	U.KE	.UK		
A.	Iowa Southern Utilities Co. Gold Deb. Temps. expected about 5-15-30. Except Ga.	6	M & N	5- 1-50	Spec.	50		98.00	6.15	C.	.UK		
	Jersey Central Power & Light Co. 1st Mtge. & Ref.	5	F & A	8- 1-47	Spec.	25		99.00	5.08	C.	.UK		
	Kentucky Utilities Co. 1st Mtge.	5	F & A	2- 1-69	27			99.50	5.03	U.KE	.UK		
T.	Manhattan Company Building (40 Wall St. Corp.) 1st Mtge. Fee & Leasehold S. F. Except Ga.	6	M & N	11- 1-58	61	23		99.00	6.07	K.	.UK	.UK	

Halsey, Stuart & Co., Inc.

DEFENDANT'S EXHIBIT 19

Bonds on Hand — Taxable Securities — At Beginning of Business May 3, 1930

Special Notes	Name of Issue	Rate	Interest Dates	Maturity	Amounts Denominations $1,000	$500	$100	Price	Yield	Code	Discounts Bks.	Dlrs.
A.	McKesson & Robbins, Inc. Conv. Deb. Temps. expected about 5-8-30.	5½	M & N	5- 1-50	Spec.			96.00	5.85	C.	.UK	.UK
T.	Metropolitan Water, Sewerage & Drainage Board Sydney, New South Wales.	5½	A & O	4- 1-50	82			92.50	6.15	C.	.UK	.UK
	Miehle Printing Press & Manufacturing Co. S. F. Deb.	5½	F & A	2- 1-48	41	7	3	95.50	5.90	i.	.UK	.UK
	Minnesota & Ontario Paper Co. Gold Notes. Except Ky., Iowa, So. Dak., Ga.	6	M & S	3- 1-31	17			99.57	6.50	U.	.UK	.UK
	Minnesota & Ontario Paper Co. 1st Mtge. S. F. Series A. Except Ky., So. Dak., Ga.	6	A & O	4- 1-32	7			99.09	6.50	U.KE	.UK	.UK
				33	2			97.30	7.00	i.	.UK	.UK
	Monongahela West Penn Public Serv. Co. 1st Lien & Ref. Mtge.	5½	F & A	2- 1-53	19	18	7	100.00	5.50	U.	.UK	
A.	Peabody Coal Co. 1st Mtge. S. F.	5	M & N	5- 1-53	29	11		85.00	6.23	i.KE	.UK	
A.	Penn Central Light & Power Co. 1st Mtge.	4½	M & N	11- 1-77	Spec.			93.50	4.85	i	.UK	

Defendant's Exhibit 19.

	Public Service Co. of Northern Illinois..... Deb.	5	M & S	9- 1-31	9			Mkt.	4.60	.KE			
	Public Service Co. of Northern Illinois..... Deb.	5	F & A	8- 1-32	13			Mkt.	4.50	.KE			
	Southern Cities Public Service Co..... Gold Notes.	5	A & O	4- 1-31	9			99.00	6.00	Q.UK	.UK	.UK	
*	Except Minn., Mo., So. Dak., Vt., Ore., Mont., Ga.												
	State & Washington Bldgs..... 1st Mtge. Series B.	5	M & S	3- 1-48	6	11		82.00	6.75	R.	.UK	.UK	
*	Except Iowa, Ga.												
A.	Super Power Co. of Illinois..... 1st Mtge.	4½	M & S	3- 1-68	9	8	2	91.00	5.03	U.KE	.UK		
	Walker Vehicle Co..... Serial G. Notes.	5½	J & D	12- 1-36	13	1		96.00	6.25	C.	.UK	.UK	
*	Except Iowa.												
R	Western Power, Light & Telephone Co..... Gold Notes.	6	J & D	6- 1-31	Spec.	25?		99.46	6.50	U.KE	.UK	.UK	
	Western United Gas & Electric Co..... 1st Mtge.	5½	J & D	12- 1-55	35			103.50	5.25	Q.KE	.UK		

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DEFENDANT'S EXHIBIT 19

Bonds on Hand Legal For	Name of Issue	Opinion	Dated	Rate	Interest Dates	Maturity	Par Amt.	Price	Yield	Code	C. C.	At Beginning of Business May 3, 1930 Discounts Bks. & Inst.	Dlrs.
	State Bonds.												
N.M.C.	Missouri, State of (Road.)		9-1-26	4¼	M & S	3-1-45	4	101.65	4.10	Q.	Q.	.UK	.UK
N.M.C.	West Virginia, State of (Series 1923.)		4-1-23	4½	A & O	4-1-44	5	103.66	4.15	Q.UK	Q.	.UK	.UK
N.M.A.	Alabama, State of		5-1-27	4¼	J & D	12-1-61	43	100.00	4.25	Q.	Q.	.UK	.UK
N.M.	Louisiana Port Com.	J.T.	Var.	4½	M & S	3-1-Var.			4.60	U.	Q.	.UK	.KE
					F & A	8-1-Var.			4.60	U.	Q.	.UK	.KE
N.M.	Louisiana Port Com. See Sales Sheet 5-5-30.	T.W.H.	Var.	5	Var.	Var.			4.60	U.	Q.	.UK	.KE
	Arkansas, State of Pension Notes.			4¼	A & O	10-1-47	15	97.00	4.50	U.	Q.	.UK	.KE
N.M.	Arkansas, State of (Highway.)	T.W.H.	5-1-28	4¼	M & N	5-1-57	9	96.12	4.50	U.	Q.	.UK	.KE
						58	48	96.04	4.50	U.	Q.	.UK	.KE
N.M.	Arkansas, State of (Highway.)	T.W.H.		4½	J & D	6-1-44	1	100.00	4.50	U.	Q.	.UK	.KE
						48	1	100.00	4.50	U.	Q.	.UK	.KE
N.M.	Arkansas, State of (Pension.)	T.W.H.		4½	A & O	10-1-39	1	100.00	4.50	U.	Q.	.UK	.KE
	City Bonds												
N.M.C.	Milwaukee, Wisc. (Sewer)			4	J & J	1-1-45	9	99.45	4.05	Q.UK	Q.	.UK	.UK
N.C.	Kansas City, Mo.			4¼	A & O	4-1-51	10	102.09	4.10	Q.	Q.	.UK	.UK
N.C.	Kansas City, Mo.			4½	J & J	7-1-42	25	103.78	4.10	Q.	Q.	.UK	.UK
N.M.C.	Milwaukee, Wisc. (Sewer.)		7-1-25	4½	J & J	7-1-41	8	103.54	4.10	Q.	Q.	.UK	.UK
N.M.C.	Milwaukee, Wisc. (Park Bonds.)		7-1-27	4½	J & J	7-1-47	5	104.88	4.10	Q.UK	Q.	.UK	.UK
N.C.	Kansas City, Mo. (Blue River Sewer.)		7-1-25	4½	J & J	7-1-44	5	104.25	4.10	Q.UK	Q.	.UK	.UK
	Kansas City, Mo. (S./D.)		1-1-26	4½	J & J	1-1-46	2	104.58	4.10	Q.UK	Q.	.UK	.UK
	Portsmouth, Ohio Street, Alley, Sewer. (1st Coupon 6-1-31.)	S.S.D.	12-1-29	4¾	J & D	12-1-31	793.27	100.51	4.40	Q.KE	Q.	.QUK	.UK
	Corpus Christi, Texas (Sea Wall.)			5	A10&O10	4-10-43	1	100.00	5.00	U.	U.	.UK	.KE
	Six Mile, Ill. (Road.)			5½	M & S	9-1-37	2	103.02	5.00	U.	U.	.UK	.KE
	Chicago, City of (Board of Education.) (Tax Anticipation.) (Warrant Notes.)	C.C.	7-1-29	6	May 15-30	5-15-30	48@5M 8@1M	100.00	6.00	.RK		.UK	.KE
					June 15-30	6-15-30	2@5M 3@1M	100.00	6.00	.RK		.UK	.KE
					July 15-30	7-15-30	6@5M 2@1M	100.00	6.00	.RK		.UK	.KE
					Aug. 15-30	8-15-30	3@5M 1@1M	100.00	6.00	.RK		.UK	.KE

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DEFENDANT'S EXHIBIT 19

Non-Taxable Securities

Bonds on Hand Legal For	Name of Issue	Opinion	Dated	Rate	Interest Dates	Maturity	Par Amt.	Price	Yield	Code	C. C.	At Beginning of Business May 3, 1930 Discounts Bks. & Inst.	Dlrs.
	County Bonds												
	Appanoose Co., Ia. (Primary Road) See Sales Sheet 5-5-30.	C.C.	5-1-30	4½	May 1st Annual	5-1-Var. Opt.1935		101.11	4.25	Q.UK	Q.	.UK	.KE
	Iowa Co., Ia. (Primary Road.) See Sales Sheet 5-5-30.	C.C.	5-1-30	4½	May 1st Annual	5-1-Var. Opt.1935		101.11	4.25	Q.UK	Q.	.UK	.KE
A.	Clayton Co., Iowa (Primary Road.) See Sales Sheet 5-5-30.	C.C.	5-1-30	4½	May 1 An.	5-1-Var. Opt. 35		101.11	4.25	Q.UK	Q.	.UK	.KE
N.Y.	Tarrant Co., Texas (Road.) See Sales Sheet 5-5-30.	C.C.	10-10-29	4½	A10O10	10-10-38-59			4.40	Q.RK	Q.	.UK	.KE
	Nueces Co., Texas (Court Hse. & Jail)	C.C.	7-1-28	4¾	A10&O10	4-10-43	1	99.53	4.80	U.	U.	.UK	.KE
	Young Co., Texas (Road.)	C.C.	6-1-27	5	F15@A15	2-15-48	4	101.76	4.85	U.	U.	.UK	.KE
	District Bonds, School Park, Etc.												
	Toledo, Ohio (School Dist.) (1st Coupon 4-1-31.)		4-1-30	4¼	A & O	4-1-40	3	100.40	4.20	Q.UK	Q.	.UK	.RK
	Irving Park Dist.			5	M & N	5-1-34	3	101.43	4.60	Q.UK	Q.	.UK	.UK
	Chicago Sanitary Dist.			4¼	M & N	11-1-32	3	99.19	4.60	Q.UK	Q.	.UK	.UK
	Chicago Sanitary Dist.			4¼	J & D	12-1-44	2	96.31	4.60	Q.UK	Q.	.UK	.UK
	Chicago Sanitary Dist.			5	J & J	7-1-36	5	102.11	4.30	Q.UK	Q.	.UK	.UK
	So. Park Comm. (Chicago.)			4	M & S	3-1-33	1	98.95	4.40	Q.UK	Q.	.UK	.UK
						38	2	97.38	4.40	Q.UK	Q.	.UK	.UK
	So. Park Comm. (Chicago.)			4	M2&N2	5-2-43	2	96.08	4.40	Q.UK	Q.	.UK	.UK
	Dallas, Texas, City & Co. (Levee Imp. Dist.) (Wholesale, 1-24M.—U. 25-49M—U.KE, 50 or over I.) See Sales Sheet 5-5-30.		6-1-28	5½	A & O	4-1-Var.			5.75	C.	I.	.KE	.KE
	West Chicago Park Com. (Tax Anticipation Warrant Notes.)	C.C.	12-1-29	6	Oct. 1, 30	10-1-30	64@5M 91@ 1M	100.00	6.00	.RK		.UK	.UK
				6	Nov. 1, 30	11-1-30	69@5M 95@ 1M	100.00	6.00	.RK		.UK	.UK
				6	Dec. 1, 30	12-1-30	78@5M 95@ 1M	100.00	6.00	.RK		.UK	.UK

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DEFENDANT'S EXHIBIT 19

Bonds on Hand — Non-Taxable Securities — At Beginning of Business May 3, 1930

Legal For	Name of Issue	Opinion	Dated	Rate	Interest Dates	Maturity	Par Amt.	Price	Yield	Code	C. C.	Discounts Bks. & Inst.	Discounts Dlrs.
	Longview, Wash.	G.E.M.	9-25-26	6	M25&S25	9-25-37		100.00	6.00	U.KE	I.	.UK	.KE
	(Local Imp.)		1-23-26	6	J23&J23	1-23-38		100.00	6.00	U.KE	I.	.UK	.KE
	Dist. No. 1 and 2		2-5-27	6	F5&A5	2-5-39		100.00	6.00	U.KE	I.	.UK	.KE
	Dist. No. 7		7-31-26	6	J31&J31	7-31-38		100.00	6.00	U.KE	I.	.UK	.KE
	Dist. No. 12		1-5-27	6	J5&J5	1-5-39		100.00	6.00	U.KE	I.	.UK	.KE
	Dist. No. 17		11-30-26	6	M30&N30	11-30-38		100.00	6.00	U.KE	I.	.UK	.KE
	Dist. No. 19												
	Dist. No. 20												
	See Sales Sheet 5-3-30.												

*For further information regarding status under Blue Sky Laws see Corporation Buying Department.

Issues at "Mkt.": Yields indicated are approximate and subject to change without notice.

All securities listed are ready in permanent form for immediate delivery, unless otherwise noted.

Interest dates are 1st day of month, unless otherwise noted.

When securities are listed "at market" reference should be made to Daily Quotation Sheet or newspapers before offering.

The Credit to Salesmen on sales of securities "at market" is entirely discretionary with the House—the credit will be based, however, on the actual profit in the transaction.

Credit to salesmen is based on schedule of credit as of time order is accepted by the stock-cards.

A—Subject to our receipt of securities.
D—.UK discount allowed investors on 5,000 or more.
E—.UK discount allowed investors on 15,000 or more.
F—.UK discount allowed investors on 25,000 or more.
G—Joint 1/2 Account—on Dealers' business only.
H—Joint 1/3 Account—on Dealers' business only.
I—Q.UK discount on 100M and .UK and 500M to anyone. Q.UK discount to Dirs. any amt.—.K on 100M or more.
N—Legal for New York.
M—Legal for Massachusetts.
C—Legal for Connecticut.
J—.UK on 5M or more to Investors and Banks.
.KE Dealers any amount—Q. on 25M or more.
K—.UK investors on 50M; .KE dealers to 50M; .RK over 50M.
S—Subject to legality.
L—To Dealers and Ins. Co.; .KE 10M or less; .RK 11M to 25M, Q. over 25M.
U—Deliver H. S. & Co. Interms wherever possible.
O—Not to be sold on Partial Payment Plan.
P—Joint 1/4 Account on Dealers' business only.
Q—Joint 1/5 Account on Dealers' business only.
T—Temporaries now; Permanents later.

ATTORNEYS APPROVING ISSUE

"B. B. M."—Barnes, Biddle & Morris, Philadelphia.
"B. C."—Benjamin H. Charles, St. Louis.
"C. B. M."—Chester B. Masslich, New York.
"C. C."—Chapman & Cutler, Chicago.
"C. C. P."—Chapman, Cutler & Parker, Chicago.
"C. D."—Clay & Dillon, New York.
"C. D. V."—Clay, Dillon & Vandewater, New York.
"C. M. R."—Caldwell, Masslich & Reed, New York.
"C. R."—Caldwell & Raymond, New York.
"C. & R."—Charles & Rutherford, St. Louis.
"D. S."—D. F. Simpson, Minneapolis.
"E. O."—Eells & Orrick, San Francisco.
"G. C."—George S. Clay, New York.
"G. E. M."—Goodfellow, Eells, Moore & Orrick, San Francisco.
"H. C."—Holland M. Cassidy, Chicago.
"J. T."—John C. Thomson, New York.
"L. S. J."—Lancaster, Simpson, Junell & Dorsey, Minneapolis.
"L. S. Q."—Lines, Spooner & Quarles, Milwaukee.
"L. W."—Lane & Waterman, Davenport.
"M. C. P."—Miller, Canfield, Paddock & Stone, Detroit.
"M. C. R."—Matson, Carter, Ross & McCord, Indianapolis.
"M. K."—Moorehead & Knox, Pittsburgh.
"M. M."—Masslich & Miller, New York.
"O. P. D."—Orrick, Palmer & Dahlquist, San Francisco.
"P. N. T."—Pershing, Nye, Tallmadge & Bosworth, Denver.
"P. S. W."—Peck, Shafer & Williams, Cincinnati.
"R. D."—Reed, Dougherty & Hoyt, New York.
"R. D. H."—Reed, Dougherty, Hoyt & Washburn, New York.
"R. H. C."—Rose, Hemingway, Cantrell & Loughborough, Little Rock.
"S. R. H."—Smith, Remster, Hornbrook & Smith, Indianapolis.
"R. H. W."—Reed, Hoyt & Washburn, New York.
"S. S. D."—Squire, Sanders & Dempsey, Cleveland.
"S. T. P."—Story, Thorndike, Palmer & Dodge, Boston.
"T. E. M."—Townsend, Elliott & Munson, Philadelphia.
"T. W. H."—Thomson, Wood & Hoffman, New York.
"T. W. Mc."—Teal, Winfree, McCulloch & Shuler, Portland.
"W."—Wood & Oakley, Chicago.

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DEFENDANT'S EXHIBIT 20

Bonds on Hand — Non-Taxable Securities — At Beginning of Business May 10, 1930

Legal For	Name of Issue	Opinion	Dated	Rate	Interest Dates	Maturity	Par Amt.	Price	Yield	Code	C. C.	Discounts Bks. & Inst.	Discounts Dlrs.
	State Bonds												
N.M.C.	West Virginia, State of (Series 1923.)		4-1-23	4½	A & O	4-1-44	3	103.65	4.15	Q.UK	Q.	.UK	.UK
N.M.	Utah, State of (Capitol Bldg.)		1-1-14	4	J & J	1-1-34	3	99.34	4.20	Q.	Q.	.UK	.UK
N.M.A.	Alabama, State of	S.T.P.	5-1-27	4¼	J & D	12-1-61	41	100.00	4.25	Q.	Q.	.UK	.UK
N.M.	Louisiana Port Com	J. T.	Var.	4½	M & S	3-1-Var.			4.60	U.	Q.	.UK	.KE
					F & A	8-1-Var.			4.60	U.	Q.	.UK	.KE
N.M.	Louisiana Port Com See Sales Sheet 5-12-30.	T.W.H.	Var.	5	Var.	Var.			4.60	U.	Q.	.UK.	.KE
N.M.	Arkansas, State of Pension Notes.	T.W.H.	12-1-27	4¼	A & O	10-1-47	13	97.01	4.50	U.	Q.	.UK	.KE
N.M.	Arkansas, State of (Highway.)	T.W.H.	5-1-28	4¼	M & N	5-1-57	9	96.12	4.50	U.	Q.	.UK	.KE
						58	68	96.05	4.50	U.	Q.	.UK	.KE
N.M.	Arkansas, State of (Highway.)	T.W.H.		4½	J & D	6-1-44	1	100.00	4.50	U.	Q.	.UK	.KE
						48	1	100.00	4.50	U.	Q.	.UK	.KE
N.M.	Arkansas, State of (Pension)	T.W.H.	11-1-28	4½	A & O	10-1-39	1	100.00	4.50	U.	Q.	.UK	.KE
	City Bonds												
N.M.C.	Minneapolis, Minn (Street Imp.)		7-1-15	4¾	J & J	7-1-31	1	109.78	4.00	.KE	Q.	Net	.QUK
N.M.C.	Milwaukee, Wisc (Sewer.)			4	J & J	1-1-45	9	99.45	4.05	Q.UK	Q.	.UK	.UK
	Cleveland, Ohio (City Hall) (Hawkins-Delafield and Longfellow opinion)			4½	F & A	2-1-33	1	101.00	4.10	Q.UK	Q.	.UK	.URK
N.C.	Kansas City, Mo			4¼	A & O	4-1-51	10	102.08	4.10	Q.	Q.	.UK	.UK
N.C.	Kansas City, Mo			4½	J & J	7-1-42	25	103.78	4.10	Q.	Q.	.UK	.UK
N.M.C.	Milwaukee, Wisc (Sewer.)	W.	7-1-25	4½	J & J	7-1-41	8	103.53	4.10	Q.	Q.	.UK	.UK
N.M.C.	Milwaukee, Wisc (Park Bonds)	W.	7-1-27	4½	J & J	7-1-47	5	104.88	4.10	Q.UK	Q.	.UK	.UK
N.C.	Kansas City, Mo (Blue River Sewer.)	J.T.	7-1-25	4½	J & J	7-1-44	5	104.24	4.10	Q.UK	Q.	.UK	.UK
N.	Kansas City, Mo (S./D.)		1-1-26	4½	J & J	1-1-46	2	104.57	4.10	Q.UK	Q.	.UK	.UK
	Portsmouth, Ohio Street, Alley, Sewer (1st Coupon 6-1-31).	S.S.D.	12-1-29	4¾	J & D	12-1-31	793.27	100.50	4.40	Q.KE	Q.	.QUK	.UK

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DEFENDANT'S EXHIBIT 20

Bonds on Hand — Non-Taxable Securities — At Beginning of Business May 10, 1930

Legal For	Name of Issue	Opinion	Dated	Rate	Interest Dates	Maturity	Par Amt.	Price	Yield	Code	C. C.	Discounts Bks. & Inst.	Discounts Dlrs.
	Corpus Christi, Texas (Sea Wall.)	W.		5	A10&O10	4-10-43	1	100.00	5.00	U.	U.	.UK	.KE
	Six Mile, Ill. Township (Road.)	C.C.	9-20-24	5½	M & S	9-1-37	1	103.00	5.00	U.	U.	.UK	.KE
	Chicago, City of (Board of Education.)	C.C.	7-1-29	6	May 15-30	5-15-30	52@5M 9@1M	100.00	6.00	.RK		.QUK	.UK
	(Tax Anticipation.)				June 15-30	6-15-30	3@1M	100.00	6.00	.RK		.QUK	.UK
	(Warrant Notes.)				July 15-30	7-15-30	10@1M	100.00	6.00	.RK		.QUK	.UK
	City Bonds												
A.	Appanoose Co., Ia (Primary Road) See Sales Sheet 5-12-30.	C.C.	5-1-30	4½	May 1st Annual	5-1-Var. Opt. 1935		101.09	4.25	Q.UK	Q.	.UK	.KE
A.	Iowa Co., Ia (Primary Road.) See Sales Sheet 5-12-30	C.C.	5-1-30	4½	May 1st Annual	5-1-Var. Opt. 1935		101.09	4.25	Q.UK	Q.	.UK	.KE
	Clayton Co., Iowa (Primary Road.) See Sales Sheet 5-12-30.	C.C.	5-1-30	4½	May 1 An.	5-1-Var. Opt.		101.09	4.25	Q.UK	Q.	.UK	.KE
N.Y.	Tarrant Co., Texas (Road) See Sales Sheet 5-12-30.	C.C.	10-10-29	4½	A10O10	10-10-38-58			4.40	Q.RK	Q.	.UK	.KE
	Nueces Co., Texas (Court Hse. & Jail.)	C.C.	7-1-28	4¾	A10&O10	4-10-43	1	99.53	4.80	U.	U.	.UK	.KE
	District Bonds, School, Park, Etc.												
	Houston, Texas (Indep. S./D.)			5	J & D	12-1-42	2	104.74	4.50	U.	Q.	.UK	.KE
	Irving Park Dist	C.C.		5	M & N	5-1-34	3	101.41	4.60	Q.UK	Q.	.UK	.UK
	Chicago Sanitary Dist			4¼	M & N	11-1-32	3	99.20	4.60	Q.UK	Q.	.QUK	.UK
	Chicago Sanitary Dist			4¼	J & D	12-1-44	1	96.33	4.60	Q.UK	Q.	.UK	.UK
	Chaicago Sanitary Dist			5	J & J	7-1-36	4	102.10	4.60	Q.UK	Q.	.UK	.UK
	So. Park Comm (Chicago			4	M & S	3-1-33	1	98.97	4.40	Q.UK	Q.	.UK	.UK
						38	2	97.39	4.40	Q.UK	Q.	.UK	.UK
	So. Park Comm (Chicago)			4	M2&N2	5-2-43	2	96.09	4.40	Q.UK	Q.	.UK	.UK
	Dallas, Texas, City & Co (Levee Imp. Dist.) (Wholesale, 1-24M.—U. 25-49M—U.KE 50 or over I.) See Sales Sheet 5-12-30.	C.C.	6-1-28	5½	A & O	4-1-Var.			5.75	C.	I.	.KE	.KE
	West Chicago Park Comm (Tax Anticipation Warrant Notes)	C.C.	12-1-29	6	Oct. 1, 30	10-1-30	64@5M 91@1M	100.00	6.00	.RK		.UK	.UK
				6	Nov. 1, 30	11-1-30	69@5M 95@1M	100.00	6.00	.RK		.UK	.UK
				6	Dec. 1, 30	12-1-30	78@5M 95@1M	100.00	6.00	.RK		.UK	.UK

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DEFENDANT'S EXHIBIT 20

Bonds on Hand — Non-Taxable Securities — At Beginning of Business May 10, 1930

Legal For	Name of Issue	Opinion	Dated	Rate	Interest Dates	Maturity	Par Amt.	Price	Yield	Code	C. C.	Discounts Bks. & Inst.	Discounts Dlrs.
	Longview, Wash. (Local Imp.)	G.E.M.											
	Dist. No. 1 and 2		9-25-26	6	M25&S25	9-25-37		100.00	6.00	U.KE	I.	.UK	.KE
	Dist. No. 7		1-23-26	6	J23&J23	1-23-38		100.00	6.00	U.KE	I.	.UK	.KE
	Dist. No. 12		2-5-27	6	F5&A5	2-5-39		100.00	6.00	U.KE	I.	.UK	.KE
	Dist. No. 17		7-31-26	6	J31&J31	7-31-38		100.00	6.00	U.KE	I.	.UK	.KE
	Dist. No. 19		1-5-27	6	J5&J5	1-5-39		100.00	6.00	U.KE	I.	.UK	.KE
	Dist. No. 20		11-30-26	6	M30&N30	11-30-38		100.00	6.00	U.KE	I.	.UK	.KE
	See Sales Sheet 5-12-30.												

*For further information regarding status under Blue Sky Laws see Corporation Buying Department.

Issues at "Mkt.": Yields indicated are approximate and subject to change without notice.

All securities listed are ready in permanent form for immediate delivery, unless otherwise noted.

Interest dates are 1st day of month, unless otherwise noted.

When securities are listed "at market" reference should be made to Daily Quotation Sheet or newspapers before offering.

The Credit to salesmen on sales of securities "at market" is entirely discretionary with the House—the credit will be based, however, on the actual profit in the transaction.

Credit to salesmen is based on schedule of credit as of time order is accepted by the stock-cards.

A—Subject to our receipt of securities.
D—.UK discount allowed investors on 5,000 or more.
E—.UK discount allowed investors on 15,000 or more.
F—.UK discount allowed investors on 25,000 or more.
G—Joint 1/2 Account—on Dealer's business only.
H—Joint 1/3 Account—on Dealers' business only.
I—Q.UK discount on 100M and .UK and 500M to anyone. Q.UK discount to Dirs. any amt.—.K on 100M or more.
N—Legal for New York.
M—Legal for Massachusetts.
C—Legal for Connecticut.
J—.UK on 5M or more to Investors and Banks. .KE Dealers any amount—Q. on 25M or more.
K—.UK investors on 50M; .KE dealers to 50M; .RK over 50M.
S—Subject to legality.
L—To Dealers and Ins. Co.; .KE 10M or less; .RK 11M to 25M, Q. over 15M.
U—Deliver H. S. & Co. Interims wherever possible.
O—Not to be sold on Partial Payment Plan.
P—Joint 1/4 Account on Dealers' business only.
Q—Joint 1/5 Account on Dealers' business only.
T—Temporaries now; Permanents later.

ATTORNEYS APPROVING ISSUE

"B. B. M."—Barnes, Biddle & Morris, Philadelphia.
"B. C."—Benjamin H. Charles, St. Louis.
"C. B. M."—Chester B. Masslich, New York.
"C. C."—Chapman & Cutler, Chicago.
"C. C. P."—Chapman, Cutler & Parker, Chicago.
"C. D."—Clay & Dillon, New York.
"C. D. V."—Clay, Dillon & Vandewater, New York.
"C. M. R."—Caldwell, Masslich & Reed, New York.
"C. R."—Caldwell & Raymond, New York.
"C. & R."—Charles & Rutherford, St. Louis.
"D. S."—D. F. Simpson, Minneapolis.
"E. O."—Eells & Orrick, San Francisco.
"G. C."—George S. Clay, New York.
"G. E. M."—Goodfellow, Eells, Moore & Orrick, San Francisco.
"H. C."—Holland M. Cassidy, Chicago.
"J. T."—John C. Thomson, New York.
"L. S. J."—Lancaster, Simpson, Junell & Dorsey, Minneapolis.
"L. S. Q."—Lines, Spooner & Quarles, Milwaukee.
"L. W."—Lane & Waterman, Davenport.
"M. C. P."—Miller, Canfield, Paddock & Stone, Detroit.
"M. C. R."—Matson, Carter, Ross & McCord, Indianapolis.
"M. K."—Moorehead & Knox, Pittsburgh.
"M. M."—Masslich & Miller, New York.
"O. P. D."—Orrick, Palmer & Dahlquist, San Francisco.
"P. N. T."—Pershing, Nye, Tallmadge & Bosworth, Denver.
"P. S. W."—Peck, Shafer & Williams, Cincinnati.
"R. D."—Reed, Dougherty & Hoyt, New York.
"R. D. H."—Reed, Dougherty, Hoyt & Washburn, New York.
"R. H. C."—Rose, Hemingway, Cantrell & Loughborough, Little Rock.
"S. R. H."—Smith, Remster, Hornbrook & Smith, Indianapolis.
"R. H. W."—Reed Hoyt & Washburn, New York
"S. S. D."—Squire, Sanders & Dempsey, Cleveland.
"S. T. P."—Story Thorndike, Palmer & Dodge, Boston.
"T. E. M."—Townsend, Elliott & Munson, Philadelphia.
"T. W. H."—Thomson, Wood & Hoffman, New York.
"T. W. Mc."—Teal, Winfree, McCulloch & Shuler, Portland.
"W."—Wood & Oakley, Chicago.

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DEFENDANT'S EXHIBIT 20

592. Defendant's Exhibit 20.

Bonds on Hand — Taxable Securities — At beginning of Business, May 10, 1930

Special Notes	Name of Issue	Rate	Interest Dates	Maturity	Amounts Denominations $1,000	$500	$100	Price	Yield	Code	Discounts Bks.	Dlrs.
	Allied Owners Corp	6	J & J	1- 1-32	5	1		98.38	7.00	i.	.UK	.UK
	Serial G. Deb.			33	34			97.53	7.00	i.KE	.UK	.UK
	Except Mich.			34	21			96.75	7.00	C.	.UK	.UK
				35	8			96.02	7.00	C.	.UK	.UK
				36	6			95.33	7.00	C.KE	.UK	.UK
				37	11			94.69	7.00	C.KE	.UK	.UK
				38	10	1		94.09	7.00	C.KE	.UK	.UK
				39	15	1		93.53	7.00	C.KE	.UK	.UK
				40	2	2		93.02	7.00	C.KE	.UK	.UK
	American Service Co	6	J & J	1- 1-44	Spec.	31		86.00	7.65	C.KE	.UK	.UK
	1st Mtge. G. Bonds with Warrants.											
	American Service Co	7	M & S	9- 1-32	22	1		99.50	7.22	C.	.UK	.UK
	Conv. Gold Notes.											
T.	Associated Gas & Electric Co	5	F & A	2- 1-50	Spec.			89.00	5.95	i.	.UK	
	Conv. Gold Deb.											
T.	Berlin City Electric Co	6	A & O	4- 1-55	Spec.			90.50	6.80	i.KE	.UK	.UK
	Deb.											
T.	Butler Brothers	5	F & A	2- 1-36	10			95.02	6.00	C.KE	.UK	.UK
	Serial Gold Deb.			37	Spec.			94.35	6.00	C.KE	.UK	.UK
	Dated 12-15-29. 1st coupon 8-1-30.			38	Spec.			93.72	6.00	C.KE	.UK	.UK
				39	Spec.			93.12	6.00	C.KE	.UK	.UK
				40	50	50		92.56	6.00	C.KE	.UK	.UK
				41	Spec.			92.03	6.00	C.KE	.UK	.UK
				42	Spec.			91.53	6.00	C.KE	.UK	.UK
				43	Spec.			91.06	6.00	C.KE	.UK	.UK
				44	Spec.			90.62	6.00	C.KE	.UK	.UK

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	Central Illinois Public Service Co. 1st Mtge.	5	M & N	11- 1-68	24			100.00	5.00	U.KE	.UK		
	Central Indiana Power Co 1st Mtge. & Coll. Tr.	6	J & J	7- 1-47	11	14	2	102.50	5.77	U.KE	.UK		
A.	Central Power & Light Co. 1st Mtge. Except Ky.	5	F & A	8- 1-56	11			97.00	5.20	U.KE	.UK		
	Central West Public Service Co 1st Lien Coll.	5½	M & N	11- 1-56	Spec.	18		90.00	6.27	C.	.UK	.UK	
	Central West Public Service Co Gold Notes.	7	F & A	8- 1-32	2	1		100.00	7.00	U.	.UK		
T.	Chicago Herald & Examiner (Illinois Publishing & Printing Co.) Secured G. Deb.	6½	M & S	3- 1-50	Spec.	Spec.		100.00	6.50	K.	.UK	.UK	
	Chicago, North Shore & Milwaukee R. R. Co. 1st Mtge.	5	J & J	7- 1-36	21	3	3	95.00	6.00	i.	.UK	.UK	
	Chicago, North Shore & Milwaukee R. R. Co. Gold Notes. Dated 2-1-30.	6	J & J	1- 1-31	Spec.			99.65	6.50	Q.KE	.UK	.UK	
	Chicago, North Shore & Milwaukee R. R. Co. Gold Notes.	6	A & O	4- 1-32	Spec.			98.16	7.00	C.	.UK	.UK	
	Chicago, North Shore & Milwaukee R. R. Co. Equip. Tr. Ctfs. Series G.	6	J & D	12- 1-36	5			100.00	6.00	i.KE	.UK	.UK	
					42	23		98.67	6.15	i.KE	.UK	.UK	
					43	65		99.07	6.10	i.KE	.UK	.UK	
					44	28		99.52	6.05	i.KE	.UK	.UK	
	Chicago, North Shore & Milwaukee R. R. Co. 1st & Ref. Mtge.	6	J & J	1- 1-55	2	15	37	81.00	7.73	C.	.UK	.UK	

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DEFENDANT'S EXHIBIT 20

Bonds on Hand — Taxable Securities — At beginning of Business, May 10, 1930

Special Notes	Name of Issue	Rate	Interest Dates	Maturity	Amounts Denominations $1,000	$500	$100	Price	Yield	Code	Discounts Bks.	Dirs.
	Consumers Co. 1st Mtge.	6	J & J	1- 1-46	9	6	6	94.50	6.57	i.KE	.UK	.UK
T.	East St. Louis & Interurban Water Co. 1st Mtge, Series D.	5	F & A	2- 1-60	77	3		94.00	5.40	U.KE	.UK	
	Florida Power Corp. 1st Mtge. Except Ga.	5½	J & J	1- 1-79	1	8		90.00	6.15	i.KE	.UK	
	Fox Film Corp. Secured Notes.	6	A & O 15	4-15-31	Spec.			100.00	6.00	U.KE	.UK	.UK
	Galveston Wharf Co. Ref. Mtge. Series B.	5½	J & J	7- 1-54	Spec.			100.00	5.50	i.	.UK	.UK
	Great Lakes Paper Co. 1st Mtge. S. F.	6	M & S	3- 1-50			5	84.00	7.57	C.	.UK	.UK
	Hearst Magazines, Inc. Serial G. Deb.	6	M & S	3- 1-33	10			98.72	6.50	C.	.UK	.UK
				34	2	2		98.32	6.50	K.	.UK	.UK
				35	1	1		97.95	6.50	K.	.UK	.UK
				36	7			97.59	6.50	K.	.UK	.UK
				37	17	1		97.24	6.50	K.	.UK	.UK
				38	8		1	96.93	6.50	K.	.UK	.UK
	Hearst Publications, Inc. 1st Mtge. Coll. Trust. Except Iowa, Ga.	6¼	M & N	11- 1-34	2			99.04	6.50	K.	.UK	.UK
				42	1	1		97.88	6.50	K.	.UK	.UK
				47	5		1	97.88	6.50	K.	.UK	.UK

	Houston Lighting & Power Co. 1st Lien & Ref. Mtge. Except Ky.	5	M & S	3- 1-53	2		5	101.50	4.90	Q.KE	.UK
	Illinois Power & Light Corp. 1st & Ref. Mtge.	5	J & D	12- 1-56	28		5	96.00	5.28	U.KE	.UK
	Illinois Power & Light Corp. 1st & Ref. Mtge.	6	A & O	4- 1-53	Spec.	10	10	104.00	5.68	i.	
	Indiana Electric Corp. 1st & Ref. Mtge. Series C.	5	M & S	3- 1-51	20			92.50	5.60	i.	.UK
	Indiana Electric Corp. 1st Mtge.	6	M & N	11- 1-47	29	10		102.50	5.77	U.KE	.UK
	Indiana Electric Corp. 1st Mtge.	6½	F & A	8- 1-53	1	6		105.50	6.06	U.KE	.UK
	Indiana Service Corp. 1st Lien & Ref Mtge.	5	F & A	2- 1-63	33	8	1	91.50	5.57	U.KE	.UK
A.	Insull Utility Investments, Inc. G. Deb. Except Mich.	5	F & A	1- 1-49	12			92.00	5.70	U.KE	.UK
	Interstate Public Service Co. 1st Mtge. & Ref.	4½	M & S	3- 1-58	37	9	6	93.00	4.97	U.KE	.UK
	Interstate Public Service Co. 1st Mtge. & Ref.	5	J & D	12- 1-56	6	6	13	101.00	4.93	U.KE	.UK
A.	Iowa Southern Utilities Co. Gold Deb. Temps. expected about 5-15-30. Except Ga.	6	M & N	5- 1-50	Spec.	50		98.00	6.15	C.	.UK
	Kentucky Utilities Co. 1st Mtge.	5	F & A	2- 1-69	23			99.50	5.03	U.KE	.UK

Defendant's Exhibit 20.

Halsey, Stuart & Co., Inc., Library

DEFENDANT'S EXHIBIT 20

Bonds on Hand — Taxable Securities — At beginning of Business, May 10, 1930

Special Notes	Name of Issue	Rate	Interest Dates	Maturity	Amounts Denominations $1,000	$500	$100	Price	Yield	Code	Discounts Bks.	Dlrs.
	La Salle Wacker Building Corp. 1st Mtge. S. F. Series A.	6	J & D	6- 1-54	25	10		92.50	6.63	QE.	.UK	.UK
•	Except Mich.											
T.	Manhattan Company Building (40 Wall St. Corp.) 1st Mtge. Fee & Leasehold S. F.	6	M & N	11- 1-58	47	12		99.00	6.07	K.	.UK	.UK
•	Except Ga.											
T.	McKesson & Robbins, Inc. Conv. Deb.	5½	M & N	5- 1-50	Spec.			96.00	5.85	C.	.UK	.UK
T.	Metropolitan Water, Sewerage & Drainage Board Sydney, New South Wales.	5½	A & O	4- 1-50	65			92.50	6.15	C.	.UK	.UK
	Miehle Printing Press & Manufacturing Co. S. F. Deb.	5½	F & A	2- 1-48	31	4	2	95.50	5.90	i.	.UK	.UK
	Minnesota & Ontario Paper Co. Gold Notes.	6	M & S	3- 1-31	17			99.57	6.50	U.	.UK	.UK
•	Except Ky., Iowa, So. Dak., Ga.											
	Minnesota & Ontario Paper Co.	6	A & O	4- 1-32	7			99.09	6.50	U.KE"	.UK	.UK
	1st Mtge. S. F. Series A.				33	1		97.30	7.00	i.	.UK	.UK
•	Except Ky., So. Dak., Ga.											
A.	National Tea Co. Gold Notes.	5	M & N	5- 1-35	19	1		99.00	5.23	i.	.UK	.UK
	Permanents expected about 5-23-30.											

A.	New England Gas & Electric Association.... Conv. G. Deb. Temps. expected about 5-26-30. Except Mo., Ky.	5	M & N	5- 1-50	Spec.			91.00	5.75	C.	.UK	.UK
A.	New York, Chicago & St. Louis R. R. Co... Ref. Mtge. G. B.	4½	M & S	9- 1-78	8			Mkt.	4.68	Q.		
A.	Peabody Coal Co..... 1st Mtge. S. F.	5	M & N	5- 1-53	37	11		85.00	6.23	i.KE	.UK	
A.	Penn Central Light & Power Co..... 1st Mtge.	4½	M & N	11- 1-77	89			93.50	4.85	i.	.UK	
	Public Service Co. of Northern Illinois..... Deb.	5	F & A	8- 1-32	19			Mkt.	4.50	.KE		
	State & Washington Bldgs..... S. F. Mtge. Series B. Except Iowa, Ga.	5	M & S	3- 1-48	3	8		82.00	6.75	R.	.UK	.UK
A.	Super Power Co. of Illinois..... 1st Mtge.	4½	M & S	3- 1-68	6	4	2	91.00	5.03	U.KE	.UK	
	Walker Vehicle Co..... Serial G. Notes. Except Iowa.	5½	J & D	12- 1-36	13	2		96.00	6.25	C.	.UK	.UK
	Western Power, Light & Telephone Co..... Gold Notes.	6	J & D	6- 1-31	Spec.	10		99.46	6.50	U.KE	.UK	.UK
	Western United Gas & Electric Co..... 1st Mtge.	5½	J & D	12- 1-55	34			103.50	5.25	Q.KE	.UK	

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DEFENDANT'S EXHIBIT 21

Taxable Securities — At beginning of Business, October 11, 1930

Bonds on Hand Special Notes	Name of Issue	Rate	Interest Dates	Maturity	Amounts Denominations $1,100	$500	$100	Price	Yield	Code	Discounts Bks.	Dlrs.
	Allied Owners Corp. Serial G. Deb. Except Mich.	6	J & J	1- 1-32	3			100.00	6.00	U.KE	.UK	.UK
				34	5			97.11	7.00	C.	.UK	.UK
				37	5			95.01	7.00	C.KE	.UK	.UK
				39	6			93.79	7.00	C.KE	.UK	.UK
	American Service Co. Conv. Gold Notes.	7	M & S	9- 1-32	42	2		100.00	7.00	C.	.UK	.UK
	Butler Brothers Serial Gold Deb.	5	F & A	2- 1-39	Spec.			93.48	6.00	T.	.UK	.UK
				40	Spec.			92.90	6.00	T.	.UK	.UK
				41	Spec.			92.35	6.00	T.	.UK	.UK
				42	Spec.			91.83	6.00	T.	.UK	.UK
				43	Spec.			91.34	6.00	T.	.UK	.UK
				44	Spec.			90.88	6.00	T.	.UK	.UK
A.	Central Ill. Public Service Co. 1st Mtge. S. F. Series F.	4½	J & D	12- 1-67	Spec.	6		95.50	4.76	Q.KE	.UK	.UK
	Central West Public Service Co. 1st Lien Coll.	5½	M & N	11- 1-56	Spec.	5		91.00	6.20	C.	.UK	.UK
	Chicago Herald & Examiner (Illinois Publishing & Printing Co.) Secured G. Deb.	6½	M & S	3- 1-50	Spec.	Spec.		100.00	6.50	T.	.UK	.UK
	Chicago, North Shore & Milwaukee R. R. Co. 1st Mtge. Series A.	5	J & J	7- 1-36	43	5		95.00	6.05	U.KE	.UK	.UK
	Chicago, North Shore & Milwaukee R. R. Co. Gold Notes.	6	J & J	1- 1-31	268			100.63	3.00	.UK		

	Chicago, North Shore & Milwaukee R. R. Co. Gold Notes.	6	A & O	4- 1-32	25			98.57	7.00	U.	.UK	.UK
	Community Power & Light Co 1st Mtge. Coll.	5	M & S	3- 1-57	13			95.75	5.30	i.KE	.UK	.UK
	Corporation Securities Co. of Chicago	4½	M & S	9- 1-31	Spec.			100.00	4.50	Q.		
	Serial Gold Notes.	5			32	Spec.		100.00	5.00	U.	.QUK	.QUK
*	Except Ind.	5			33	Spec.		98.97	5.375	U.KE	.QUK	.QUK
		5			34	Spec.		97.79	5.625	i.	.QUK	.QUK
		5			35	Spec.		96.78	5.75	i.	.QUK	.QUK
A.	Eastern Shore Public Service Co 1st Mtge. & 1st Lien Series "B."	5	M & S	9- 1-55	60	9		94.00	5.37	i.	.UK	.UK
*	Not qualified in West.											
	500 Fifth ..venue, Inc 1st Mtge. Leasehold S. F.	6½	J & D	6- 1-49	Spec.	Spec.	50	94.75	7.00	A.	.UK	.UK
*	Except Iowa, Mich., Wis., Vt.											
	Fox Film Corp Secured Notes.	6	A & O	15	4-15-31	Spec.		Mkt.	14.58	Q.KE		
	General Gas & Electric Corp	5	F & A	15	8-15-32	Spec.		99.15	5.49	Q.KE	.QUK	
	Serial Gold Notes.	5				33	Spec.	98.00	5.77	U.	.UK	
		5				34	Spec.	97.35	5.78	U.UK	.UK	
		5				35	Spec.	95.75	6.02	U.KE	.UK	
	Hearst Magazines, Inc	6	M & S	3- 1-36	3			97.18	6.625	K.	.UK	.UK
	Serial G. Deb.				37	7		96.13	6.75	K.	.UK	.UK
					38	4		95.66	6.75	K.	.UK	.UK
	Insull Utility Inv. Inc Gold Debs. Ex-Warr.	5	F & A	1- 1-49	27			90.60	5.90	U.	.UK	.UK
A.	Iowa Power & Light Co 1st Mtge.	4½	M & S	3- 1-58	Spec.			Mkt.	4.70	Q.		
	Iowa Southern Utilities Co Gold Deb.	6	M & N	5- 1-50	Spec.			98.00	6.15	C.	.UK	.UK

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DEFENDANT'S EXHIBIT 21

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Defendant's Exhibit 21.

Bonds on Hand — Taxable Securities — At beginning of Business, October 11, 1930

Special Notes	Name of Issue	Rate	Interest Dates	Maturity	Amounts Denominations $1,100	$500	$100	Price	Yield	Code	Discounts Bks.	Dlrs.
A.	Kokomo Water Works Co. 1st Mtge. Series A.	5	J & D	6- 1-58	Spec.			95.00	5.33	i.	.UK	.UK
A.	Michigan Gas & Elec. Co. 1st Mtge.	5	J & D	12- 1-56	Spec.	25	25	98.50	5.10	U.KE	.UK	.UK
	Midland Utilities Co. Gold Debs. Series A.	6	M & S	9- 1-38	8			101.00	5.85	Q.KE	.UK	.UK
	Miehle Printing Press & Manufacturing Co. S. F. Deb.	5½	F & A	2- 1-48	74			94.50	5.98	i.	.UK	.UK
A.	Minnesota & Ontario Paper Co. Gold Notes.	6	M & S	3- 1-31	18			100.22	5.50	Q.		
*	Except Ky., So. Dak.											
	Minnesota & Ontario Paper Co.	6	A & O	4- 1-31	2			100.00	6.00	Q.		
	1st Mtge. S. F. Series A.				32	2		99.27	6.50	U.KE	.UK	.UK
*	Except Ky., So. Dak.				34	7		97.00	7.00	i.	.UK	.UK
	Monongahela West Penn Public Service Co. 1st Lien & Ref. Mtge.	5½	F & A	2- 1-53	40	9		102.00	5.35	U.	.UK	.UK
	Mortgage Guaranty Associates	5½	J & D	6- 1-34	4			96.75	6.50	K.	.UK	.UK
	1st Mtge. & Coll.				36	4		93.05	7.00	T.	.UK	.UK
*	Except Calif.				38	2		91.20	7.00	A.	.UK	.UK
	National Pole & Treating Co. Gold Notes.	6	J & D	12- 1-31	25	1		98.90	7.00	U.	.UK	.UK
*	Except So. Dak.											

A.	New Jersey Power & Light Co. 1st Mtge. Temps. expected 10-15-30.	4½	A & O	10-	1-60	Spec.	25		101.50	4.41	U.	.UK	.UK
	North American Funding Corp. 1st Mtge. & Coll. Trust.	6	F & A	2-	1-49	Spec.	20.	3	90.00	7.00	A.	.UK	.UK
A.	Ohio Elec. Pr. Co. 1st Mtge. G. B.	5	J & D	6-	1-57	17			96.00	5.28	U.KE	.UK	.UK
	Omaha Bee News. Serial G. Deb.	6	M & N	11-	1-34	1			96.47	7.00	C.	.UK	.UK
					37	1			94.47	7.00	K.	.UK	.UK
					38	7			93.88	7.00	K.	.UK	.UK
					39	3	1		93.35	7.00	K.	.UK	.UK
					40	2			92.83	7.00	T.	.UK	.UK
					41	14			92.36	7.00	T.	.UK	.UK
					42	29	4		91.92	7.00	T.	.UK	.UK
					43	2			91.50	7.00	T.	.UK	.UK
T.	Portland General Electric Co. 1st & Ref. Mtge.	4½	M & S	9-	1-60	Spec.			93.75	4.90	i.	.UK	.UK
A.	Public Service Subsidiary Corp. Gold Deb.	5½	J & J	1-	1-49	34			99.75	5.52	U.	.UK	.UK
A.	San Antonio Public Service Co. 1st & Ref.	5	J & J	1-	1-58	Spec.			Mkt. Plus Comm.	4.91	Q.		
	Super Power Co. of Ill. 1st Mtge.	4½	M & S	3-	1-68	Spec.	10	5	96.00	4.73	U.KE	.UK	.UK
	Tidewater Power Co. 1st Mtge. Except Iowa.	5	F & A	2-	1-79	6	1		96.50	5.20	i.	.UK	.UK
A.	Uruguay, Republic of. External S. F.	6	M & N	5-	1-60	84			Mkt. Plus Comm.	7.33	Q.		

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DEFENDANT'S EXHIBIT 21

Bonds on Hand — Non-Taxable Securities — At Beginning of Business October 11, 1930

Legal For	Name of Issue	Opinion	Dated	Rate	Interest Dates	Maturity	Par Amt.	Price	Yield	Code	C. C.	Discounts: Bks. & Inst.	Discounts: Dlrs.
	State Bonds												
N.W.	Louisiana Port Com.	T.W.H.	3-1-17	4½	M & S	3-1-31	5	100.49	3.50	Q.RK	Q.	.UK	.KE
	Louisiana, State of (Highway)			5	M & S	3-1-31	1	100.48	3.50	.KE	Net	Net	Net
	Illinois, State of (Highway)			4	3-1-Ann.	3-1-43	2	100.49	3.95	Q.	Q.	.QUK	.QUK
	Arkansas, State of (Highway)			4½	J & D	6-1-44	2	102.04	4.30	Q.UK	Q.	.UK	.KE
						45	1	102.15	4.30	Q.UK	Q.	.UK	.KE
						46	2	102.25	4.30	Q.UK	Q.	.UK	.KE
	Arkansas, State of (Highway)		7-1-30	4¾	J & J	7-1-43	15	105.07	4.35	Q.UK	Q.	.UK	.KE
	Arkansas, State of (Highway)			5	M & S	9-1-45	2	107.04	4.35	Q.UK	Q.	.UK	.KE
						49	5	108.97	4.35	Q.UK	Q.	.UK	.KE
	City Bonds												
N.M.C.	Chicago, City of (Airport)	C.C.		4	J & J	1-1-32	10	100.56	3.50	.TUK	.KE	.QUK	.QUK
	Chicago, City of (General Corporate G. B.) (1st Coupon 1-1-31.)	C.C.	8-1-30	4	J & J	1-1-34	10	100.29	3.90	.KE	.KE	.QUK	.QUK
N.M.C.	Denver, Colo., City & Co. (Water Refund.)	C.D.V.	6-1-27	4¼	J & D	6-1-38	40	102.30	3.90	.RK	.RK	.QUK	.UK
						44	1	103.68	3.90	Q.UK	Q.	.UK	.IRK
						45	2	103.88	3.90	Q.UK	Q.	.UK	.IRK
						46	17	104.07	3.90	Q.UK	Q.	.UK	.IRK
						47	91	104.26	3.90	Q.UK	Q.	.UK	.IRK
						48	148	104.43	3.90	Q.UK	Q.	.UK	.IRK
						49	156	104.61	3.90	Q.UK	Q.	.UK	.IRK
						50	31	104.77	3.90	Q.UK	Q.	.UK	.IRK
N.M.C.	Chicago, City of (Var. Imp.)	C.C.	7-1-30	4	J & J	1-1-40	10	100.00	4.00	Q.UK	Q.	.QUK	.UK
						44	4	100.00	4.00	Q.UK	Q.	.QUK	.UK
						46	5	100.00	4.00	Q.UK	Q.	.QUK	.UK
						47	20	100.00	4.00	Q.UK	Q.	.QUK	.UK
						48	5	100.00	4.00	Q.UK	Q.	.QUK	.UK
						49	64	100.00	4.00	Q.UK	Q.	.QUK	.UK
A. N.M.C.	San Francisco, Cal., City & Co. (Water Supply Bonds)	T.W.H.	7-1-28	4½	J & J	7-1-46	57	105.77	4.00	Q.UK	Q.	.UK	.IRK
						47	100	106.03	4.00	Q.UK	Q.	.UK	.IRK
						48	100	106.29	4.00	Q.UK	Q.	.UK	.IRK
						49	100	106.53	4.00	Q.UK	Q.	.UK	.IRK
						50	100	106.76	4.00	Q.UK	Q.	.UK	.IRK
						51	100	106.98	4.00	Q.UK	Q.	.UK	.IRK
						52	100	107.20	4.00	Q.UK	Q.	.UK	.IRK
						53	100	107.40	4.00	Q.UK	Q.	.UK	.IRK
						54	100	107.60	4.00	Q.UK	Q.	.UK	.IRK
						55	100	107.79	4.00	Q.UK	Q.	.UK	.IRK
						56	100	107.97	4.00	Q.UK	Q.	.UK	.IRK
						57	100	108.15	4.00	Q.UK	Q.	.UK	.IRK
						58	100	108.32	4.00	Q.UK	Q.	.UK	.IRK

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DEFENDANT'S EXHIBIT 21

Bonds on Hand — Non-Taxable Securities — At Beginning of Business October 11, 1930

Legal For	Name of Issue	Opinion	Dated	Rate	Interest Dates	Maturity	Par Amt.	Price	Yield	Code	C. C.	Discounts Pks. & Inst.	Discounts Dlrs.
						59	100	108.48	4.00	Q.UK	Q.	.UK	.IRK
						60	100	108.63	4.00	Q.UK	Q.	.UK	.IRK
						61	100	108.78	4.00	Q.UK	Q.	.UK	.IRK
						62	100	108.93	4.00	Q.UK	Q.	.UK	.IRK
						63	100	109.07	4.00	Q.UK	Q.	.UK	.IRK
						64	100	109.20	4.00	Q.UK	Q.	.UK	.IRK
						65	100	109.33	4.00	Q.UK	Q.	.UK	.IRK
						66	100	109.45	4.00	Q.UK	Q.	.UK	.IRK
						67	100	109.57	4.00	Q.UK	Q.	.UK	.IRK
						68	100	109.68	4.00	Q.UK	Q.	.UK	.IRK
						69	100	109.79	4.00	Q.UK	Q.	.UK	.IRK
						70	80	109.89	4.00	Q.UK	Q.	.UK	.IRK
						71	100	109.99	4.00	Q.UK	Q.	.UK	.IRK
						72	100	110.08	4.00	Q.UK	Q.	.UK	.IRK
						73	100	110.18	4.00	Q.UK	Q.	.UK	.IRK
						74	100	110.27	4.00	Q.UK	Q.	.UK	.IRK
						75	100	110.35	4.00	Q.UK	Q.	.UK	.IRK
						76	100	110.44	4.00	Q.UK	Q.	.UK	.IRK
						77	100	110.52	4.00	Q.UK	Q.	.UK	.IRK
N.	Wilmington, Del	H.D.L.	5-2-21	4½	A & O	4-1-45	2	105.71	4.00	Q.UK	Q.	.QUK	.UK
	Akron, Ohio (Sewerage Disposal)	S.S.		4½	A & O	10-1-61	50	105.58	4.10	Q.KE	Q.	.UK	.IRK
M.M.C.	Detroit, Mich. (Pub. Utility)	W.		4½	J & J	1-1-45	1	104.48	4.10	Q.KE	Q.	.UK	.UK
A.	New Orleans, La. (Sewerage-Water Drainage.)	T.W.H.	10-1-30	4½	A & O	10-1-40	3	102.41	4.20	Q.UK	Q.	.QUK	
						60	35	105.08	4.20	Q.UK	Q.	.UK	
						61	35	105.17	4.20	Q.UK	Q.	.UK	
	Vicksburg, Miss. (Public Imp.)			4¾	F & A	8-1-36	5	101.73	4.40	Q.KE	Q.	.UK	.KE
	Carbondale, Ill., City of (Imp. for Water Dist. No. 1.)			6	7-1-Ann.	7-1-32	3	100.00	6.00	I.	I.	.KE	Q.
						35	8	100.00	6.00	I.	I.	.KE	Q.
						36	3	100.00	6.00	I.	I.	.KE	Q.
	County Bonds												
	Multnomah Co. (Road.)			4½	M15&S15	9-15-48	1	105.04	4.10	Q.KE	Q.	.UK	.KE
	Wayne Co., Iowa (Primary Road.)		7-1-29	5	5-1-Ann.	5-1-39 Opt. 35	1	102.95	4.25	Q.KE	Q.	.UK	.KE
	Cook Co., Ill. (Tax Notes)		6-1-29	6	Maturity	12-1-30	1@5M	100.50	4.75	.RK	Net	.QUK	.QUK
	Cook Co., Ill. (Highway Tax Anticipation War.)		9-15-29	6	Maturity	3-15-31	32	100.58	4.75	.RK	Net	.QUK	.QUK
	District Bonds, School, Park, Etc.												
A.	Rockford, Ill. (Sanitary Dist.)	C.C.	9-1-30	4¼	M & S	9-1-39	12	101.85	4.00	Q.	Q.	.QUK	.IRK
	White Fish Bay, Wisc. (S./D. No. 1)	C.C.	5-1-30	4¼	M & N	5-1-45	4	101.63	4.10	Q.UK	Q.	.UK	.IRK

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DEFENDANT'S EXHIBIT 21

Bonds on Hand — Non-Taxable Securities — At Beginning of Business October 11, 1930

Legal For	Name of Issue	Opinion	Dated	Rate	Interest Dates	Maturity	Par Amt.	Price	Yield	Code	C. C.	Discounts Bks. & Inst.	Discounts Dlrs.
	Oklahoma City, Okla. (School Dist.) (1st Coupon 1-15-31)		1-15-30	4½	J15&J15	1-15-51	44	104.66	4.20	Q.UK	Q.	.UK	.UK
	San Antonio, Texas (Independent School.)		4-1-30	4¾	A & O	4-1-66	25	109.11	4.25	Q.UK	Q.	.UK	.UK
						67	25	109.22	4.25	Q.UK	Q.	.UK	.UK
	West Chicago Park Com. (Tax Anticipation Warrant Notes) (1M and 5M Denom.)	C.C.	12-1-29	6	Maturity		Spec.	100.66	4.75	.KE	Net	Net	.QUK
A	Chicago, City of		9-1-30	5¾	Maturity		2	101.11	4.75	.RK	Net	.QUK	.UK
	(Board of Education Tax Anticipation Warrants.)		11-1-30	5¾	Maturity		Spec.	101.03	4.75	.RK	Net	.QUK	.UK
			12-15-30	5¾	Maturity		Spec.	100.92	4.75	.RK	Net	.QUK	.UK
	Dallas, Texas, City & Co. (Levee Imp. Dist.)	C.C.	6-1-28	5½	A & O	4-1-42	12	97.92	5.75	C.	I.	.KE	.KE
	Wholesale 1-24M-U.					43	5	97.79	5.75	C.	I.	.KE	.KE
	25-49M-U.KE-50M or over I.					51	64	97.01	5.75	C.	I.	.KE	.KE
						52	68	96.94	5.75	C.	I.	.KE	.KE
						53	60	96.87	5.75	C.	I.	.KE	.KE
						54	64	96.80	5.75	C.	I.	.KE	.KE
						55	5	96.74	5.75	C.	I.	.KE	.KE
						56	14	96.68	5.75	C.	I.	.KE	.KE
						57	35	96.62	5.75	C.	I.	.KE	.KE
						58	1	96.57	5.75	C.	I.	.KE	.KE
	Longview, Wash. (Local Imp. Dist. No. 11)		5-27-26	6	M & S27	5-27-38							
	50%						50	100.00	6.00	U.	U.	.UK	.KE
	60%						59	100.00	6.00	U.	U.	.UK	.KE
	70%						50	100.00	6.00	U.	U.	.UK	.KE
	80%						43	100.00	6.00	U.	U.	.UK	.KE

*For further information regarding status under Blue Sky Laws, see Corporation Buying Department.
On "Mkt." issues, yields indicated are approximate and are subject to change without notice. Price must be obtained from Trading Dept.
A—Subject to our receipt of securities.
N—Legal for New York.
M—Legal for Massachusetts.
C—Legal for Connecticut.
S—Subject to legality.
D—Deliver H. S. & Co. Interims wherever possible.
T—Temporaries now; Permanents later.

ATTORNEYS APPROVING ISSUE

"C. C."—Chapman & Cutler, Chicago.
"C. D. V."—Clay, Dillon & Vandewater, New York.
"C. D. W."—C. D. Wood, Chicago.
"H. D. L."—Hawkins, Delafield and Longfellow, New York.
"S. S. D."—Squire, Sanders & Dempsey, Cleveland.
"T. W. H."—Thomson, Wood & Hoffman, New York.
"W."—Wood & Oakley, Chicago.

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DEFENDANT'S EXHIBIT 22.

Western
Union

Day Letter
Alex Hay
Tax Agent
Longview Washington

Chicago October 16 1930

Dist #11

Will appreciate night letter our expense Your advices whether Longview owns its water electric light and gas works and how financed and whether our opinion correct that District Eleven approximately coextensive with city and its bonds issued for sewer purposes Stop Are any of LongBells Mills in District Eleven Regret necessity troubling you This matter however important account interested substantial amount These bonds have asked us above specific questions

Halsey Stuart & Co

RES:MS
4.20 pm

DEFENDANT'S EXHIBIT 23.

Western
Union

PRA 818 47 NL Collect—Longview Wash 16

1930 Oct 16 PM 11 40

Halsey Stuart & Co
201 South La Salle St Chicago Ill
C 2212

Longview does not own water electric light or gas works These owned by public utility companies Stop You are correct that District Eleven approximately coextensive with city and its bonds issued for sewer purposes Stop Neither Longbell nor Weyerhaeuser Mills in District Eleven or city limits

Alex Hay

This wire sent "Collect" Mark envelope for charge to Financial, Buying, Sales or Joint Account

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DEFENDANT'S EXHIBIT 25.

Public Utility Bonds Sold

To

Equitable Life Insurance Company of Iowa

$ 195,000	Public Service Company of Oklahoma	5 %	1957
55,000	Public Service Company of Oklahoma	5 %	1961
50,000	Interstate Public Service Company	4½	1958
50,000	Interstate Public Service Company	5	1956
100,000	Houston Lighting & Power Company	4½	1978
100,000	Houston Lighting & Power Company	5	1953
110,000	Houston Lighting & Power Company	4½	1981
100,000	Binghampton Light, Heat & Power Company	5	1946
200,000	Wisconsin Power & Light Company	5	1958
100,000	Wisconsin Power & Ligh. Company	5	1961
100,000	Penn Central Light & Power Company	4½	1977
15,000	Laclede Gas Light Company	5½	1960
200,000	Texas Electric Service Company	5	1960
125,000	Kentucky Utilities Company	5	1969
10,000	Kentucky Utilities Company	5½	1955
75,000	San Antonio Public Service Company	5	1958
200,000	Central Illinois Public Service Company	4½	1967
100,000	Central Illinois Public Service Company	4½	1981
30,000	Kansas Power & Light Company	5	1957
30,000	Metropolitan Edison Company	4	1971
100,000	Pennsylvania Electric Company	4	1971
230,000	Pennsylvania Electric Company	5	1962
100,000	Jersey Central Power & Light Company	4½	1961
100,000	Commonwealth Edison Company	4	1981
50,000	Peoples Gas Light & Coke Company	4	1981
125,000	Northern Indiana Public Service Company	4½	1970
$2,650,000-655	Total		

Various State, City, County and District Bonds Sold

To

Equitable Life Insurance Company of Iowa

$ 38,000	Orange County, Florida	5%	1951
62,000	St. Petersburg, Florida	6	Various
169,000	Fort Worth, Texas	4¾	Various
200,000	Toledo, Ohio	Various	Various
70,000	Greater Greensboro, N. C. School District	4¾	Various
100,000	Municipal Investment Trust Ctf	6	1932
50,000	Texarkana, Texas	5	Various
110,000	Mobile, Alabama	5	Various
373,000	City & County of Dallas Levee District	5½	Various
395,000	State of Arkansas	Various	Various
25,000	Tacoma, Washington Electric Light & Power Revenue	Various	Various
4,000	Jacksonville, Texas	6	1942
303,000	Chicago Water Revenue	5	Various
300,000	State of Louisiana Port Commission	Various	Various
99,000	Chicago South Park Commission	4	Various
10,000	Tarrant County, Texas	4½	1961
155,000	Chicago, Illinois	4	Various
25,000	State of Illinois	4¾	Various
50,000	State of Michigan	5¾	1941
5,000	San Antonio, Texas School District	5	1957
357,000	Longview, Washington L. I. D	6	Various
$ 2,900,000	Total		

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DEFENDANT'S EXHIBIT 26

Securities Sold by Halsey, Stuart & Co., Inc.

To

Equitable Life Insurance Company of Iowa

(March 4, 1929 to April 24, 1934, inclusive)

Date	Par Amount	Issue	Rate	Maturity
3- 4-29	$ 100,000	Penn Central Light & Power	4½%	1977
3- 5-29	80,000	Toledo, Ohio	5	12-15-33
3- 5-29	20,000	Toledo, Ohio	4¾	9-15-33
3- 5-29	80,000	Toledo, Ohio	5	6-15-33
3- 5-29	20,000	Toledo, Ohio	4¾	9-15-34
3-21-29	70,000	Greater Greensboro School Dist	4¾	2-1-var.
4-28-29	169,000	Fort Worth, Texas	4¾	3-1-var.
5- 2-29	100,000	Houston Lighting & Power	5	1953
10- 8-29	100,000	Municipal Investment Trust	6	10- 1-32
Total Sales	$ 739,000			
1- 8-30	$ 110,000	Mobile, Alabama	5	12-1-var.
3-12-30	15,000	Laclede Gas Light Co	5½	2- 1-60
1- 7-30	50,000	Texarkana, Texas	5	6-15-var.
4-21-30	200,000	City & County of Dallas, Texas Levee Improvement District	5½	4-1-var.
5-17-30	11,000	Longview, Washington District 1	6	9-25-37
5-17-30	5,000	Longview, Washington District 7	6	1-23-38
5-17-30	13,000	Longview, Washington District 12	6	2- 5-39
5-17-30	8,000	Longview, Washington District 17	6	7-31-38
5-17-30	2,000	Longview, Washington District 18	6	10- 1-38
5-17-30	46,000	Longview, Washington District 19	6	1- 5-39
5-26-30	13,000	Longview, Washington District 1	6	9-25-37
5-26-30	1,000	Longview, Washington District 20	6	11-30-38
5-26-30	1,000	Longview, Washington District 19	6	1- 5-39
6-21-30	91,000	City & County of Dallas, Texas	5½	4-1-var.
7-30-30	20,000	City & County of Dallas, Texas	5½	4- 1-57
8-12-30	4,000	City of Longview, Wash. Dist. 1 & 2	6	9-25-37
9-26-30	4,000	Longview, Washington Dist. 1 & 2	6	9-25-37
8-12-30	1,000	Longview, Washington Dist. 11	6	5-27-38
8-12-30	1,000	City of Longview, Wash. Dist. 7	6	1-23-38
8-12-30	9,000	Longview, Washington Dist. 19	6	1- 5-39
8-20-30	10,000	Tacoma, Washington	5	1- 1-36
8-20-30	2,000	Tacoma, Washington	5	1- 1-33
8-19-30	3,000	Longview, Wash. Dist. 12	6	2- 5-39
8-19-30	2,000	Longview, Wash. Dist. 1	6	9-25-37
8-19-30	5,000	Longview, Wash. Dist. 11	6	5-27-38
7- 8-30	100,000	Wisconsin Power & Light Co	5	12- 1-58
8-15-30	200,000	Texas Electric Service Co	5	7- 1-60
9-19-30	47,000	City & County of Dallas, Texas	5½	4-1-var.
9-22-30	5,000	Kentucky Utilities Co	6½	9- 1-48
9-26-30	5,000	Longview, Wash. Dist. 11	6	5-27-38
10- 7-30	3,000	Longview, Wash. Dist. 18	6	10- 1-38
10- 7-30	5,000	Longview, Wash. Dist. 1	6	9-25-37
10- 8-30	1,000	Longview, Wash. Dist. 20	6	11-30-38
10-16-30	200,000	Longview, Wash. Local Imp. Dist. 11	6	5-27-38

DEFENDANT'S EXHIBIT 26

Date	Par Amount	Issue	Rate	Maturity
1-24-30	$ 5,000	Tacoma, Washington	5½%	1- 1-40
1-31-30	75,000	San Antonio Public Service Co	5	1- 1-58
1-28-30	4,000	Jacksonville, Texas	6	9- 1-42
1-28-30	2,000	Longview, Washington Dist. 11	6	5-27-38
1-29-30	100,000	State of Arkansas Highway	4¾	7-1-54/56
1-12-30	100,000	Northern Indiana Public Service Co	4½	12- 1-70
1- 9-30	100,000	Kentucky Utilities Co	5	2- 1-69
1-13-30	25,000	Kentucky Utilities Co	5	2- 1-69
1-16-30	200,000	Central Illinois Public Service Co	4½	12- 1-67
1- 5-30	70,000	State of Arkansas Highway	4¾	1-1-var.
1- 6-30	50,000	State of Arkansas Highway	4¾	7- 1-61
1-30-30	250,000	City of Chicago Water Funding	5	1-1-var.
Total Sales	$ 2,170,000			
1- 9-31	$ 5,000	Tacoma, Washington	5½	1- 1-39
1-30-31	1,000	Longview, Washington Dist. 12	6	2- 5-39
1-30-31	4,000	Longview, Washington Dist. 19	6	1- 5-39
1-30-31	6,000	Longview, Washington Dist. 11	6	5-27-38
1-30-31	1,000	Longview, Washington Dist. 6	6	10-15-37
1-30-31	1,000	Longview, Washington Dist. 1	6	9-25-37
1-28-31	3,000	Longview, Washington Dist. 1	6	9-25-37
1- 8-31	100,000	State of Arkansas Highway	4¾	7- 1-59
1-16-31	2,000	Louisiana Port Commission	4½	3-1-var.
1-16-31	26,000	Louisiana Port Commission	4¾	12-1-var.
1-16-31	250,000	Louisiana Port Commission	4½	8-1-var.
1-16-31	9,000	Louisiana Port Commission	5	7-1-var.
1-16-31	12,000	Louisiana Port Commission	5	12-1-var.
1-16-31	1,000	Louisiana Port Commission	5	6- 1-48
1- 5-31	3,000	Tacoma, Washington Light & Power	4¾	10- 1-37

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Date	Par Amount	Issue	Rate	Matu
5-22-31	99,000	Chicago South Park Commissioners	4 %	3-15-
5-22-31	10,000	Tarrant County, Texas	4½	3-15-
5-12-31	100,000	Public Service Company of Oklahoma	5	5- 1-
5-21-31	25,000	Metropolitan Edison Co	4	5- 1-
5-21-31	30,000	Kansas Power & Light	5	5- 1-
5-22-31	100,000	Pennsylvania Electric Co	4	5- 1-
6-27-31	105,000	City of Chicago	4	1-1-
6-29-31	100,000	Central Illinois Public Service Co	4½	6- 1-
6-22-31	100,000	Houston Lighting & Power	4½	1981
6-24-31	100,000	Commonwealth Edison Co	4	1981
6-24-31	100,000	Jersey Central Power & Light	4½	1961
7- 3-31	50,000	City of Chicago	4	1933
7-14-31	50,000	Peoples Gas Light & Coke	4	1981
8- 4-31	5,000	San Antonio, Texas School	5	7- 1-
8- 5-31	100,000	Wisconsin Power & Light Co	5	1961
10-17-31	10,000	Houston Lighting & Power	4½	1981
9-21-31	53,000	City of Chicago Water Revenue	5	1948
Total Sales	$ 1,561,000			
3-19-32	25,000	State of Arkansas Highway	4¼	5- 1-
3-21-32	25,000	State of Arkansas Highway	4¼	5- 1-
3-22-32	25,000	State of Arkansas Highway	4¼	1951-5
9- 6-32	15,000	Pennsylvania Electric Co	5	1962
9- 6-32	60,000	Pennsylvania Electric Co	5	1962
9- 8-32	5,000	Pennsylvania Electric Co	5	1962
9- 9-32	5,000	Pennsylvania Electric Co	5	1962
9-10-32	15,000	Pennsylvania Electric Co	5	1962
9-27-32	11,000	Pennsylvania Electric Co	4	1971
12-23-32	10,000	Kentucky Utilities Co	5	1969
12-31-32	5,000	Pennsylvania Electric Co	5	1962
Total Sales	$ 201,000			
2-24-33	4,000	Pennsylvania Electric Co	5	1962
7-17-33	3,000	Pennsylvania Electric Co	5	1962
7-18-33	20,000	Pennsylvania Electric Co	5	1962
7-28-33	15,000	Pennsylvania Electric Co	5	1962
7-29-33	5,000	Pennsylvania Electric Co	5	1962
6- 7-33	25,000	Northern Indiana Public Service Co	4½	1970
8-14-33	4,000	Pennsylvania Electric Co	5	1962
9- 8-33	3,000	Pennsylvania Electric Co	5	1962
10-26-33	25,000	State of Illinois Service Corp	4¾	1940
Total Sales	$ 104,000			1943
4-24-34	$ 50,000	State of Michigan Soldiers' Bonus	5¾	1941
Tot. Par Amt. Sold	$ 4,825,000			

GBK MS

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DEFENDANT'S EXHIBIT 33.

(Letterhead of The Long-Bell Lumber Company, Kansas City, Mo.)

April 11, 1927.

Halsey, Stuart & Company,
201 South LaSalle Street,
Chicago, Illinois.

Gentlemen:

Herewith L. I. D. circular forwarded with your letter of the 8th.

It is said that these bonds were issued to The Longview Company for improvements installed by it acquired by the City. This was true for District No. 11, which was created by the City to acquire the sewers constructed by The Longview Company.

The bonds to be offered by the present circular were issued for payment for work contracted direct by the City, and we had arranged to acquire the bonds from the contractors when such bonds were delivered to them by the City.

Also, herewith a suggestion by Mr. Kendall of our Advertising Department concerning Longview. This is sent you for such use as you may care to make of it, by way of either its adoption or revision of what you have already prepared.

When you have completed the circulars, will you please send me one dozen copies and oblige.

Very truly yours,
(Signed) R. T. Demsey
Vice President.

RTD G

DEFENDANT'S EXHIBIT 33a.

Longview

is situated about 133 miles south of Seattle at the confluence of the Columbia and Cowlitz rivers. Longview has a frontage of 7¼ miles on the Columbia River and 5 miles on the Cowlitz River and is a port of call for ocean-going vessels. It is midway between Portland and the Pacific Ocean. Excellent rail transportation is furnished by four railroads, and the Longview docks are accessible to the largest ocean-going vessels, and hundreds of ocean freight-

ers have called at the great docks on Longview's superb harbor. The Columbia River, which ranks second among the rivers of the United States both in length and volume of water, is from 2500 to 3500 feet wide and 30 feet to 65 feet deep at this point, forming a turning basin in which the largest cargo ships turn under their own power. Because of its natural advantages and proximity to the timber stands of the Long-Bell and Weyerhaeuser interests, Longview was selected as the site for the vast lumber manufacturing plants of these companies. The present output of the Long-Bell plants is 1,800,000 board feet per day. The Weyerhaeuser plants are under construction. Manufacturing plants have also been erected by other concerns including the Longview Concrete Pipe Company, The Pacific Straw Paper and Board Company, The Magor Car Corporation, The Standard Oil Company, Longview Paint and Varnish Company and the Central Mill Works. The first unit of the plants of the Longview Fibre Company, to cost 2½ million dollars, is now well under way. Longview, with a population of 12,000 has more than 36 miles of concrete paved streets, 115 miles of graded and graveled streets, 71 miles of concrete sidewalks, 56 miles of water mains and 48 miles of storm and sanitary sewers. The city has been laid out by expert city planners along model lines, and has excellent schools, a motorized fire department, a thoroughly modern hospital, library, community Y. M. C. A. and other public buildings. Two banks report combined deposits of more than $1,500,000 and have over 4500 depositors. The city offers many outdoor recreational facilities including a modern golf course. Fertile suburban tracts adjoin the city.

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DEFENDANT'S EXHIBIT 36

Longview District Bonds Sold to Equitable and Record of Our Purchases of Those Bonds February 11, 1939

Date Purchased	Par Amount	Bond Numbers	District Number	Price	Bonds Held To Date By Equitable		Sales to Equitable		
							Date	Amount	Price
4/22/30	10,000	M 207/16	1	98.50	1,000	M 216	5/17/30	-10,000	99.75
4/23/30	1,000	M 308	1	98.00	1,000		5/17/30	1,000	99.75
5/24/30	5,000	M 376/77-395/97	1	99.00	5,000		5/26/30	13,000	99.75
5/26/30	8,000	M 314-343/46-355/57	1	99.00	8,000				
8/ 6/30	2,000	M 272/73	1	98.50	2,000		8/19/30	2,000	99.75
10/ 7/30	5,000	M 390/94	1	99.00	5,000		10/ 7/30	5,000	99.75
10/21/30	4,000	M 337/40	1	98.00	4,000		2/26/31	3,000	100.00
							1/30/31	1,000	100.00
12/ 8/30	1,000	M 60	6	100.00	0		1/30/31	1,000	100.00
2/11/30	5,000	M 49/53	7	99.00	0		5/17/30	5,000	99.75
8/ 4/30	1,000	M 162	7	100.00	1,000		8/12/30	1,000	99.75
7/11/30	1,000	M 620	11	99.50	1,000		8/12/30	1,000	99.75
8/12/30	5,000	M 839/43	11	99.00	5,000		8/19/30	2,000	99.75
							9/26/30	3,000	99.75
9/13/30	5,000	M 902/6	11	98.50	5,000		8/19/30	3,000	99.75
							9/26/30	2,000	99.75
10/ 9/30	179,000	M 367/408-455/504	11	89.00	137,000	M 455/504	10/16/30	177,000	99.75
		M 546/95-637/73				M 546/95	10/28/30	2,000	99.75
						M 637/73			
10/ 9/30	16,000	M 688/93-697/700	11	98.00	16,000		10/16/30	10,000	99.75
		M 745/48-751/52					1/30/31	6,000	100.00
10/17/30	13,000	M 674/86	11	100.00F1	13,000		10/16/30	13,000	99.75
11/29/29	5,000	M 140/44	12	100.00	5,000				
11/29/29	3,000	M 94/6	12	100.00	0		5/17/30	13,000	99.75
2/24/30	5,000	M 114/18	12	98.50	4,000	M 115/18			
8/ 9/30	3,000	M 107/9	12	99.00	0		8/19/30	3,000	99.75
11/19/30	1,000	M 196	12	98.00	1,000		1/30/31	1,000	100.00
1/30/30	8,000	M 14/18-20/22	17	98.25	0		5/17/30	8,000	99.75
4/22/30	2,000	M 32-35	18	95.00	2,000		5/17/30	2,000	99.75
10/ 3/30	3,000	M 26-33/34	18	98.00	3,000		10/ 7/30	3,000	99.75
10/ 9/29	1,000	M 264	19	98.00	1,000				
10/ 9/29	1,000	M 320	19	98.25	1,000				
10/26/29	15,000	M 419/33	19	96.00	2,000	M 432/33	5/17/30	29,000	99.75
11/29/29	1,000	M 262	19	100.00	1,000				
12/ 6/29	1,000	M 336	19	98.00	1,000				
12/11/29	10,000	M 326/35	19	98.00	10,000				
1/31/30	4,000	M 260-444/6	19	99.00	4,000		5/17/30	4,000	99.75
2/ 4/30	1,000	M 313	19	98.50	1,000		5/26/30	1,000	99.75
2/28/30	9,000	M 434/42	19	97.50	9,000		5/17/30	13,000	99.75
3/22/30	4,000	M 344/47	19	99.50	4,000				
7/28/30	4,000	M 294/97	19	99.00	4,000		8/12/30	9,000	99.75
7/29/30	5,000	M 414/18	19	99.50	5,000				
10/25/30	1,000	M 257	19	100.00	1,000		1/30/31	1,000	100.00
10/31/30	3,000	M 406/8	19	96.50	3,000		1/30/31	3,000	100.00
11/15/29	1,000	M 5	20	98.00	0		5/26/30	1,000	99.75
10/ 9/30	1,000	M 10	20	98.00	0		10/ 8/30	1,000	99.75
Totals	353,000				266,000			353,000	

LW

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DEFENDANT'S EXHIBIT 37.

Longview District Bonds

Purchases		Sales
	1929	
127,000	Investors	105,000
27,000	Financial Inst.	12,000
75,000	Dealers	12,000
—	(Called Bonds Collection Dept.)	33,000
229,000	Total	162,000
	1930	
101,000	Investors	145,000
93,000	Financial Inst.	371,000
301,000	Dealers	0
—	(Called Bonds Collection Dept.)	25,000
495,000	Total	541,000
	1931	
16,000	Investors	51,000
27,000	Financial Inst.	35,000
12,000	Dealers	0
55,000	Total	86,000
	Summary	
Purchases		Sales
244,000	Investors	301,000
147,000	Financial Inst.	418,000
388,000	Dealers	12,000
—	(Called Bonds Collection Dept.)	58,000
779,000	Total	789,000

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DEFENDANT'S EXHIBIT 51.

(Letterhead of Equitable Life Insurance Company of Iowa.)

Des Moines Aug. 14, 1934.

Mr. C. T. MacNeille,
Halsey Stuart & Co.,
201 So. LaSalle St.,
Chicago, Ill.

Dear Clarence:

I would like very much to see you the latter part of this week in regard to the L. I. D. bonds owned by this Company, and if convenient, would like to make an appointment with you for Friday morning at your office. I think it would probably be very advisable if I could also have an opportunity to see Mr. Stuart at that time. Would appreciate your letting me know whether or not you and Mr. Stuart can see me Friday.

Very truly yours,
(signed) F. W. Hubbell,
Vice Pres. and Treas.

FWH-ME

DEFENDANT'S EXHIBIT 53.

(Letterhead of Equitable Life Insurance Company of Iowa.)

Des Moines April 10, 1934.

Mr. C. T. MacNeille, Vice-President
Halsey, Stuart & Co.,
201 So. La Salle Street,
Chicago, Illinois.

My dear Mr. MacNeille:

During the past month, we have had a further report on the situation at Long View, Washington, and find that the town is flourishing, there being practically no vacancies compared to the very large number this time last year.

It is also reported that the Long Bell Lumber Company is going ahead full speed but due to the fact that they are no longer paying any taxes, our Long View Bonds

are now facing a default. As a matter of fact, they have already defaulted in one district.

I have talked this matter over with my associates and there seems to be a serious question as to what course we should pursue, and before making any decision, I would appreciate a report from you at your convenience as to what progress is being made in the reorganization of the Long Bell Lumber Company and what, in your opinion, can best be done by the holders of these L. I. D. Bonds in order to protect their investment. If the Long Bell Lumber Company and its subsidiaries would pay their assessments, these bonds would be paid out in due course without resorting to the guarantee which may or may not be of any value, and I am beginning to wonder whether it is quite fair for the Long Bell Lumber Company not only to ignore its guarantee, but also to withhold payment of these assessments and instead of making these payments, pay some other creditors who may be more insistent.

Very truly yours,
(signed) F. W. Hubbell,
Vice-President & Treas.

FWH:RV

DEFENDANT'S EXHIBIT 54.

(Letterhead of Equitable Life Insurance Company of Iowa.)

Des Moines May 18, 1934.

Mr. C. T. MacNeille,
Halsey, Stuart & Co.,
201 So. La Salle St.,
Chicago, Ill.

My dear Mr. MacNeille:

I just returned to the office this morning after a rather extended vacation, and have found your several letters, and note particularly your letters of April 26th and May 16th.

It would appear to me that it would be advisable for us to have a conference with Mr. Jesse Andrews and Mr. C. E. Lombardi, and, of course, I would be very happy to have you and these other two gentlemen come to Des Moines, or, if that is inconvenient, could plan to come to Chicago some time within the next ten days, or could even go to Kansas City. Then if it seems advisable, and

in view of the fact that we have such a large interest in the Longview bonds, I would be willing to spend a few days with you in Longview to go over the entire situation.

Very truly yours,
(signed) F. W. Hubbell,
Vice Pres. and Treas.

FWH—ME

DEFENDANT'S EXHIBIT 55.

(Letterhead of Halsey, Stuart & Co. Incorporated.)
201 South La Salle Street
Chicago, Illinois
May 24, 1934.

The Equitable Life Insurance Company of Iowa,
Des Moines,
Iowa.

Attention—Mr. F. W. Hubbell.

Gentlemen:

In compliance with your request of our Mr. Kelley, we are sending under separate registered cover transcripts of proceedings with respect to Longview, Washington, Improvement Bonds of the following Districts,—

No. 12	Original	amount	$225,298.51,	dated	2/ 5/27
No. 17	"	"	21,625.40	"	7/31/26
No. 18	"	"	34,960.93	"	10/ 1/26
No. 19	"	"	464,104.47	"	1/ 5/27
No. 20	"	"	12,425.72	"	11/30/26

Our records do not disclose that we ever received the transcripts with respect to the bonds of Districts Nos. 1, 2, 6, 7 and 11. We are, accordingly, writing the attorneys and the Long-Bell Lumber Company, Kansas City, to inquire if they have these showings, requesting them in the event they have to send them on to you.

We are, of course, desirous of recovering these transcripts after they have served your purpose in order that our files may be complete, so we shall appreciate it if you will return them to us in due course, meanwhile acknowledging the receipt of transcripts going forward today under separate cover, returning the acknowledgment to us for our files.

Very truly yours,
(signed) Halsey Stuart.

RES:MES.

DEFENDANT'S EXHIBIT 56

Lid #	Bond Issue	No. of Bonds	Bonds Outstanding	Numbers Outstanding	Due Date Last Coupon Paid
1	426,815.81	1–428 inc.	213,000.00	216–428 inc.	March 25, 1937
7	116,870.08	1–118 inc.	61,000.00	58–118 inc.	January 23, 1936
11	908,699.57	1–909 inc.	492,000.00	418–909 inc.	May 27, 1937
12	225,298.51	1–226 inc.	112,000.00	115–226 inc.	February 5, 1938
18	34,960.93	1– 35 inc.	22,000.00	14– 35 inc.	April 1, 1936
19	464,104.47	1–465 inc.	253,000.00	213–465 inc.	January 5, 1937

Dear Mr. Hay:

I have taken it for granted that the information requested under Paragraph #2, means the due date of the last interest coupon paid—if I am wrong, please advise.

(Signed) Faye Scott Witt,

City of Longview,
Treas.

MW

667

Entered Apr. 21, 1939.

110 And afterwards, to wit, on the 21st day of April, A. D. 1939, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit: Verdict.

111 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—44353) * *

VERDICT.

We, the Jury, find the issues for the plaintiff and assess the amount of the plaintiff's damages at Sixty Six Thousand One Hundred Fifty Dollars and No/100 Cents ($66,150.00).

C. R. Findeison,
Foreman,
Mark Snett,
Frank Friend,
Thomas Reisman,
Joseph Fink,
John F. Ryan,
Wilbert Newton,
Fred Warchus,
David L. Syton,
Edward Teash,
Don W. Valentine,
Ralph L. Town.

112 And afterwards, to wit, on the 21st day of April, A. D. 1939, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

113 IN THE DISTRICT COURT OF THE UNITED STATES. Entered Apr. 21, 1939.
* * (Caption—44353) * *

Friday, April 21, A. D. 1939.

Present: The Honorable John P. Barnes, District Judge.

JUDGMENT.

This day again come the parties to this suit by their attorneys respectively and the jury heretofore empaneled herein for the trial of said cause also come and say "We the Jury find the issues for the Plaintiff and assess the Plaintiff's damages at the sum of Sixty-Six Thousand One Hundred Fifty and No/100 Dollars ($66,150.00)."

Therefore It is considered by the Court that the Plaintiff Equitable Life Insurance Company of Iowa, a corporation, do have and recover of and from the Defendant Halsey Stuart & Co., a corporation, its said damages of Sixty-Six Thousand One Hundred Fifty and No/100 Dollars ($66,150.00) in form as aforesaid by the Jury assessed together with its costs and charges in this behalf expended and have execution therefor.

114 And on, to wit, the 1st day of May, A. D. 1939, came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Motion for a New Trial in words and figures following, to wit:

115 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—44353) * *

MOTION OF HALSEY, STUART & CO., DEFENDANT FOR A NEW TRIAL.

Now comes the defendant, Halsey, Stuart & Co., by Poppenhusen, Johnston, Thompson & Raymond, its attorneys, and, pursuant to Rule 59 of the Rules of Civil Procedure, files its motion for a new trial of the above entitled cause, and for grounds of said motion shows:

1. That the verdict of the jury is against the manifest weight of the evidence.

2. That the Court erred in instructing the jury in the following particulars, to which instructions defendant duly

objected and excepted before the retirement of the jury to consider its verdict:

(a) The second instruction given by the Court, beginning with the words "One selling securities who undertakes to furnish information concerning the securities which he offers for sale is required to make a reasonable disclosure of the facts * * *", is inaccurate as a
116 statement of law applied to the facts in this case, misleading and highly prejudicial for the following reasons:

(1) Under the facts disclosed in this case, Halsey, Stuart & Co. was under no legal duty to disclose any additional facts concerning the Longview Improvement Districts Bonds or The Long-Bell Lumber Company to the plaintiff.

(2) There was no basis under the evidence in this case for the giving of an instruction to the jury to the effect that a partial and fragmentary disclosure of certain facts concerning an issue of securities accompanied by the wilful concealment of material facts which changed the effect of the facts actually stated is as much a fraud as an actual positive misrepresentation.

(3) The statement in the instruction to the effect that "If, therefore, the defendant, Halsey, Stuart & Co., by stating certain facts while at the same time concealing other facts relating to the same subject then within its knowledge, led plaintiff to believe that the facts surrounding the issue of Longview, Washington Local Improvement District Bonds were materially different than they were in fact, defendant would be guilty of false and fraudulent representations" is erroneous:

(aa) As assuming the existence of certain facts as established and not leaving the question of the existence of such facts to the jury;

(bb) In failing to charge that the facts concealed must be material facts relating to the securities which were the subject matter of the sale;

(cc) As stating an incorrect principle of law not applicable to the facts disclosed by the record in this case;

(dd) That this portion of the instruction completely ignores the essential requirement of both wilful action and intent to deceive.

117 (4) That the instruction involves several abstract principles of law which are not by the instruction made applicable to the facts in this case and which were, therefore, confusing and misleading to the jury and highly prejudicial to the defendant.

(b) The third instruction given by the Court, beginning "In order to recover damages in this action plaintiff must establish by the preponderance or greater weight of the evidence the following", was erroneous in the following particulars:

(1) The instruction confuses affirmative misrepresentations with failure to disclose and, although a mandatory instruction, fails entirely to advise the jury as to the requisite elements which must be established in an action based upon failure to disclose material facts.

(2) That the first paragraph of said instruction is erroneous as a matter of law, in so far as it instructs the jury that the defendant was under a duty to disclose material facts with respect to the financial condition of The Long-Bell Lumber Company "in some one or more of the particulars set forth in the complaint filed in this proceeding", for the reason that there was no legal duty on the part of defendant to disclose such facts and for the further reason that the jury was not advised and had no way of knowing what the particulars set forth in the complaint were.

(3) That said instruction does not inform the jury that the representations must be material representations of fact, nor does the Court instruct the jury as to what representations relied upon by the plaintiff and set forth in plaintiff's complaint were or may be regarded as material.

(4) That paragraph 3 of said instruction is erroneous in that the Court failed to instruct the jury which representations the plaintiff had the right to rely on, but allowed the jury to speculate as to any or all of the alleged representations charged in the complaint or referred to in the evidence.

118 (5) That the fourth paragraph of said instruction is erroneous in so far as it instructs the jury that plaintiff may rely upon representations "knowingly made by defendant as true with no reasonable ground to believe them to be true, for the purpose of inducing plaintiff to act", since there was no evidence in the record upon which such instruction could properly be predicated, no evidence having been introduced that the defendant had no reasonable ground to believe the representations relied upon by plaintiff but, on the contrary, the evidence of the defendant clearly disclosed that the defendant did have reasonable ground to believe such representations to be true.

(6) That the instruction is further misleading and highly prejudicial in not advising the jury that the plain-

tiff was required to establish all of the five elements of an action of deceit before the plaintiff could recover, the instructions as given being calculated to lead the jury to believe that the establishment of any one of those elements was sufficient to entitle the plaintiff to a verdict.

(7) That the instruction as a whole does not clearly, accurately or completely set forth the five essential elements which must be established by the plaintiff in an action for fraud or deceit.

(c) The fourth instruction given by the Court, beginning "Both plaintiff and defendant are corporations and necessarily act through their officers", is erroneous in singling out the evidence of certain of the witnesses for the defendant and directing the attention of the jury to such evidence. The instruction is further erroneous in stating that if the executive officers of defendant knew "the true conditions surrounding said bonds or the financial condition of The Long-Bell Lumber Company, and other officers or employees of defendant made representations substantially as charged by plaintiff, then defendant would be guilty of making false and fraudulent representations", since said instruction purports to charge the defendant with making false and fraudulent representations without advising the jury as to what constitutes
119 a false and fraudulent representation and as further leading the jury to believe, contrary to the allegations of the complaint and the evidence, that false and fraudulent representations were made with respect to the financial condition of The Long-Bell Lumber Company. The concluding paragraph of said instruction that, if employees of the defendant making the representations were not aware of their falsity, such fact would not be a defense to the plaintiff's claim, is erroneous, misleading and highly prejudicial as leading the jury to believe that it could and should disregard the testimony of the representatives of the defendant who made the alleged representations.

(d) The fifth instruction given by the Court, beginning "You are instructed that the evidence discloses that tax foreclosure proceedings under the Washington law have been had involving a large part of the real estate subject to assessment in Longview", is erroneous, misleading and highly prejudicial in that it:

(1) Calls attention to certain specific evidence offered by the plaintiff;

(2) Instructs the jury in effect that it may consider, in determining the amount of the plaintiff's damages, the effect of tax foreclosure proceedings brought in the year

1938 involving certain parcels of land in the City of Longview, Washington. Such facts are wholly irrelevant, incompetent and immaterial on the issue of damages in this case and an instruction thereon could only mislead the jury both as to the time as of which damages must be computed under the law and the elements properly entering into a determination of such damages.

(e) The sixth instruction given by the Court, beginning as follows: "You are instructed that plaintiff was not required to make an independent investigation of the Longview Local Improvement Districts Bonds", is
120 erroneous because in conflict with instruction number 8 which the Court gave and therefore tended to confuse and mislead the jury, and is further erroneous in that it is an incorrect statement of the law as an abstract principle of law.

(f) The Court erred in modifying defendant's submitted instruction number 9 by adding the last three paragraphs thereto, the first of which begins as follows: "In determining the actual value of said bonds at the time they were acquired by the plaintiff", for the reasons that:

(1) The jury is instructed that it may consider the character of the land subject to assessment, the existence of other liens upon the lands, the local conditions then existing at Longview, and the true financial condition of The Long-Bell Lumber Company, although no representations were made or alleged to have been made by the defendant with respect to such subjects;

(2) The jury was further instructed that it might consider, in addition, "all other facts and circumstances then existing as shown by the evidence", whereas the jury was limited to a consideration of only those facts and circumstances shown by the evidence relating to the specific misrepresentations or failure to disclose upon which the plaintiff relied;

(3) The second modification of said instruction, beginning "In determining the fair actual value of said Local Improvement District Bonds at the times plaintiff acquired the bonds", stated an erroneous principle of law, in that the jury was advised that it might take into consideration "subsequent events and developments which are the direct and proximate result of conditions then existing". This instruction was highly prejudicial and confusing, was erroneous in allowing the jury to consider events and developments subsequent to the dates on which the bonds were purchased, and failed to instruct the jury

as to the meaning of the words "direct and proximate result of conditions then existing".

121 (4) The Court further erred in modifying said instruction by adding the third paragraph, reading "In this connection you are further instructed that the facts that sales of some of the Longview Local Improvement District Bonds may have been made", for the reason that said instruction was not based upon any evidence in the record and was, therefore, confusing and misleading to the jury.

(g) The Court erred in modifying defendant's requested instruction number 5 by deleting therefrom the last three lines reading as follows:

"Even though you find from the evidence that the defendant was negligent in failing to ascertain the exact facts stated in said written representations"

since the plaintiff was not entitled in this case to recover for negligent misrepresentation.

3. That the Court erred in failing to instruct the jury as follows, to which action of the Court the defendant duly objected and excepted before the retirement of the jury to consider its verdict:

"2. The plaintiff's complaint in this case declares that certain affirmative representations were made by the defendant to the plaintiff in writing in the year 1930 in connection with the purchase by the plaintiff from the defendant of certain Longview Improvement Districts Bonds and that such representations were made by the defendant wilfully, maliciously, fraudulently and falsely, for the purpose of inducing the purchase of said bonds by the plaintiff. You are instructed that, under the law applicable to this case, in order for the plaintiff to recover on account of such representations, you must find from the evidence:

(a) That such representations were false when made;

(b) That they were known or believed by the defendant to have been false when made;

122 (c) That they were made by the defendant with the intent or purpose of deceiving the plaintiff;

(d) That the plaintiff relied upon such representations in the purchase of said bonds; and

(e) That, as the result of such reliance by the plaintiff, plaintiff has sustained damages.

3. One of the representations in writing claimed to have been relied upon by plaintiff in this case is the statement contained in the letter dated May 14, 1930, from the

defendant's agent Wood to F. W. Hubbell (Pltff's Ex. B-24), reading as follows:

'We believe you have before you practically all of the data covering this issue of bonds, but if you have any question in mind we shall be pleased indeed to have you call Mr. Kelley or this office for anything that you may need.'

You are instructed that, as a matter of law, the plaintiff did not have the right to rely upon this representation as a representation by the defendant to the plaintiff that the defendant had disclosed to the plaintiff everything that it knew about Longview Improvement Districts Bonds.

4. One of the representations in writing claimed to have been relied upon by plaintiff in this case is the statement contained in the letter of May 14, 1930, addressed by defendant's agent Wood to Hubbell (Pltff's Ex. B-24), reading as follows:

'You observe, of course, that this city has no funded debt, other than these improvement bonds, and that the original debt has been materially reduced through retirement and maturity.'

You are instructed, as a matter of law, that the plaintiff did not have the right to rely upon this representation as a representation by the defendant to the plaintiff that no bonds had been issued by any governmental or political body other than the Longview Local Improvement Dis-
123 tricts, taxes to pay which bonds and interest thereon would be a lien or charge upon lands located in the City of Longview, Washington.

6. You are instructed that, if you find from the evidence that the statements contained in the printed circular (Pltff's Ex. B-1) were obtained by the defendant from The Long-Bell Lumber Company and were believed by the defendant to be true and were relied upon by the defendant in the original purchase by it of said Longview Local Improvement Districts Bonds from The Long-Bell Lumber Company and that such statements do not purport to have been made as of its own knowledge but to have been based upon information received by it from The Long-Bell Lumber Company and believed by it to be reliable, and that said statements were believed by the defendant to be true at the time of the sale of Longview Local Improvement Districts Bonds to the plaintiff, then you are instructed that the defendant cannot be held liable in this suit for such statements.

7. You are instructed that under the law applicable to this case there was no fiduciary relationship existing be-

tween the plaintiff and the defendant at the time of the sale of Longview Local Improvement Districts Bonds to the plaintiff, and the defendant was under no legal duty to voluntarily disclose everything which it knew regarding Longview Local Improvement Districts Bonds or The Long-Bell Lumber Company to the plaintiff, but its legal duty was to truthfully state all facts which it purported to state to the plaintiff and to truthfully answer all inquiries or questions received from the plaintiff.

11. You are instructed, as a matter of law, that the statement contained in the printed circular (Pltff's Ex. B-1) that

'Because of its natural advantages and proximity to the timber stands of the Long-Bell and Weyerhaeuser interests, Longview was selected as the site for the vast lumber manufacturing plants of these companies',

referring to the Long-Bell and Weyehaeuser Companies, was not, when taken together with its context, a statement or representation by defendant that the plants of The Long-Bell Lumber Company and the Weyerhaeuser Timber Company were located within the technical city limits of the City of Longview.

124 12. You are instructed, as a matter of law, that the statement contained in the printed circular (Pltff's Ex. B-1) that

'It (referring to the City of Longview) has a frontage of 7¼ miles on the former (the Columbia River)'

was not, under facts and circumstances disclosed in this case, a material representation of fact.

13. You are instructed that under the law applicable to this case the plaintiff is not entitled to rely upon expressions of opinion as representations, and if you find that the statement—

'We believe you have before you practically all of the data covering this issue of bonds, but if you have any question in mind we shall be pleased indeed to have you call Mr. Kelley or this office for anything that you may need.'.

was an expression of opinion, then you are instructed that, as a matter of law, the plaintiff did not have the right to rely upon this representation as a representation by the defendant to the plaintiff that the defendant had disclosed to the plaintiff everything it knew about Longview Local Improvement Districts bonds.

16. You are instructed to find the issues in this case for the defendant, Halsey, Stuart & Co."

the foregoing instructions being correct and proper statements of the law which should have been given to the jury, in order to properly advise the jury with respect to the law applicable to this case.

4. That the Court erred in re-reading to the jury all of the Court's instructions over the objection of the defendant thereto.

125 5. That the Court erred in admitting the following evidence over the objection of the defendant:

(a) All evidence relating to the financial condition of The Long-Bell Lumber Company subsequent to the respective dates on which the Longview Improvement Districts Bonds were sold to the plaintiff, all evidence relating to the condition of the City of Longview subsequent to said dates, all evidence relating to the question of the value of Longview Improvement Districts Bonds after said dates and, in general, all evidence offered by the plaintiff for the purpose of establishing damages, relating to events, conditions, circumstances or happenings subsequent to the last sale of Local Improvement Districts Bonds by the defendant to the plaintiff.

(b) All evidence relating to the alleged failures of the defendant to disclose any facts or circumstances relating to the financial condition of The Long-Bell Lumber Company, any facts or circumstances relating to the City of Longview or the condition of lands and property within the City of Longview or as to the Cowlitz County Consolidated Diking District No. 1 or the bonds issued by said district, and all other facts and circumstances claimed by the plaintiff not to have been disclosed by the defendant at the time of the purchase of said Longview Improvement Districts Bonds from the defendant.

(c) All conversations and communications between officers, officials and agents of The Long-Bell Lumber Company and officers, officials and agents of the defendant not bearing directly upon the alleged misrepresentations set up in the plaintiff's complaint.

(d) All evidence to which objection has heretofore been taken by the defendant, whether such objections were made to the specific questions or to the entire line of questioning or inquiry.

126 6. That the Court erred in refusing to admit material, competent and relevant evidence offered by the defendant as follows:

(a) Testimony of the witness Frank A. Wood as to his intent at the time of the writing of the letter of May 14, 1930 (Pltff's Ex. B-24).

(b) Testimony of the witness Robert E. Simond as to reliance by the defendant upon the information received from The Long-Bell Lumber Company in connection with the preparation of the circulars describing Longview Improvement Districts Bonds.

(c) Testimony of the witness Jesse Andrews as to the reason and purpose for the organization of The Long-Bell Lumber Sales Company, as to the effect of such organization upon the financial position of The Long-Bell Lumber Company, and as to the position of the commercial bankers of The Long-Bell Lumber Company as compared with the position of the holders of long term bonds of The Long-Bell Lumber Company.

(d) Testimony of the witness A. E. Bryson as to the quarterly reports of the Long-Bell Lumber Corporation and subsidiaries as disclosed in national financial papers and magazines other than those which were admittedly taken by the plaintiff.

(e) Testimony of the witness Harold L. Stuart as to the effect of losses disclosed by quarterly earnings statements of a corporation issuing long term bonds upon the market value of such bonds.

7. That the Court erred in admitting in evidence, over the objection of the defendant, the following numbered plaintiff's exhibits: B-2, B-3, B-4, B-5, B-6, B-7, B-8, B-9, B-10, B-11, B-12, B-13, B-14, B-15, B-16, B-17, B-18, B-19, B-20, B-21, B-22, B-48, B-49, B-50, B-51, B-52, B-53, B-54, P-33, P-35, aerial photographs numbered Plaintiff's Exhibits 1 to 16, both inclusive, photographs of Longview taken by Mr. Paine numbered Plaintiff's Exhibits 19 to 32, both inclusive, P-47, P-48, P-49, W-1, to W-15, both inclusive, B-57, and the memoranda attached to Plaintiff's Exhibits B-58, B-59, B-60, P-34, P-38, P-39, P-40, P-50 and P-51.

127 8. That the Court erred in refusing to admit in evidence the following exhibits offered in evidence by the defendant: Defendant's Exhibits 22, 23, 46, 47 and 48.

9. That there was no evidence in the record from which the jury could find or determine the difference, if any, between the true value of the $266,000 Longview Improvement Districts Bonds now held by the plaintiff as of the dates of the respective purchases of said bonds from the defendant and the true value of said bonds at said times if they had been as represented.

10. That the amount of damages found by the jury is not based upon any evidence in the record but was and is a wholly speculative amount arrived at by an arbitrary

compromise of conflicting opinions of the jurors, which opinions had no factual basis in the record.

11. That the Court erred in overruling the motion of the defendant at the close of the plaintiff's evidence to direct a verdict for the defendant.

12. That the Court erred in overruling the motion of the defendant at the close of all of the evidence to direct a verdict for the defendant.

13. That the Court erred in overruling the motion of the defendant at the close of the plaintiff's evidence to strike from the record all evidence relating to the financial condition of The Long-Bell Lumber Company subsequent to the respective dates on which Longview Improvement Districts Bonds were sold to the plaintiff by the defendant;

relating to the question of the value of Local Improve-
128 ment Districts Bonds after said dates and relating to

matters, events and happenings after the respective dates of the sale of said Longview Improvement Districts Bonds so far as said evidence was offered in support of plaintiff's claim for damages; all evidence relating to the alleged failures of the defendant to disclose facts regarding the condition of The Long-Bell Lumber Company, the condition of lots, lands and properties in the City of Longview, the Longview Improvement Districts Bonds, Cowlitz County Consolidated Diking District No. 1 and the bonds issued by said district, and all other evidence bearing upon the alleged failures of the defendant to disclose facts to the plaintiff regarding which the plaintiff made no inquiry and requested no information, and all other evidence to which objection was taken by the defendant at the time said evidence was offered by the plaintiff.

14. That the verdict of the jury is contrary to the law.

Wherefore, for all of the reasons hereinabove set forth, the defendant prays that it be granted a new trial of said cause.

Halsey, Stuart & Co.,
Defendant,
By Poppenhusen, Johnston, Thompson & Raymond,
Its Attorneys.

Poppenhusen, Johnston, Thompson & Raymond,
Attorneys for said Defendant.
11 South La Salle Street, Chicago,
Randolph 0220.

Entered May 20, 1939.

129 And afterwards, to wit, on the 20th day of May, A. D. 1939, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, apears the following entry, to wit:

130 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—44353). * *

Saturday, May 20, A. D. 1939.

Present: The Honorable Michael L. Igoe, District Judge.

This cause coming on to be heard on the Defendant's motion heretofore entered herein for a new trial in said cause after arguments of counsel and due deliberation by the court said motion is overruled and a new trial denied.

Filed June 27, 1939.

668 And on, to wit, the 27th day of June, 1939, came the Defendant by its attorneys and filed in the Clerk's office of said Court a certain Notice of Appeal in words and figures following, to wit:

669 United States of America,
Northern District of Illinois, } ss.
Eastern Division.

IN THE DISTRICT COURT OF THE UNITED STATES;

For the Northern District of Illinois,

Eastern Division.

Equitable Life Insurance Company of Iowa, a corporation, *Plaintiff*, *vs.* Halsey, Stuart & Co., a corporation, *Defendant.*	In Law No. 44353.

NOTICE OF APPEAL.

Notice is hereby given that Halsey, Stuart & Co., a corporation, defendant in the above entitled cause, hereby appeals to the United States Circuit Court of Appeals for the Seventh Circuit from the final judgment for $66,150.00

and costs entered in the above entitled action on the 21st day of April, 1939.

Halsey, Stuart & Co., a corporation,
Defendant,
By Poppenhusen, Johnston, Thompson & Raymond,
Attorneys for said Defendant.
11 South La Salle Stret,
Chicago, Illinois.

670 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

I, Hoyt King, Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, Do Hereby Certify that on the 28th day of June, A. D. 1939, copy of Notice of Appeal in the case of Equitable Life Insurance Company of Iowa *vs.* Halsey-Stuart & Company, Incorporated, No. 44353, was mailed to Messrs. Montgomery, Hart, Pritchard & Herriott, 120 S. LaSalle Street, Chicago, Illinois, Attorneys for the Plaintiff in said case.

In Witness Whereof, I have hereunto set my hand and Seal this Twenty-fifth day of July, A. D. 1939.

Hoyt King,
(Seal) *Clerk.*

671 And afterwards, to wit, on the 10th day of July, A. D. 1939, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit: Entered July 10, 1939.

672 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—44353) * *

ORDER APPROVING SUPERSEDEAS BOND.

This cause coming on to be heard on the motion of defendant herein, by Poppenhusen, Johnston, Thompson & Raymond, its attorneys, for the approval of its appeal bond herein, notice of said motion having been duly served

upon the attorneys for the plaintiff, and the Court having examined said bond and being fully advised in the premises;

It Is Ordered that said supersedeas bond, in the penal sum of Seventy Thousand Dollars ($70,000.00), with Halsey, Stuart & Co. as Principal and Seaboard Surety Company, as Surety, be and the same is hereby approved and ordered filed herein, and when so filed said bond shall operate as a supersedeas.

Enter:

James H. Wilkerson,
Judge.

Dated, Chicago, Illinois, July 10, 1939.

Filed July 10, 1939.

673 And on, to wit, the 10th day of July, 1939, came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Supersedeas Bond in words and figures following, to wit:

674 In the District Court of the United States.

* * (Caption—44353) * *

SUPERSEDEAS BOND.

Know All Men By These Presents:

That we, Halsey, Stuart & Co. Inc., a corporation, as Principal, and Seaboard Surety Company as Surety, are held and firmly bound unto Equitable Life Insurance Company of Iowa, a corporation, in the full and just sum of Seventy Thousand Dollars ($70,000.00), to be paid to the said Equitable Life Insurance Company of Iowa, its successors or assigns, to which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally by these presents.

Signed with our seals and dated this 7th day of July, A. D. 1939.

Whereas lately, at the April Term of the United States District Court for the Northern District of Illinois,
675 Eastern Division, in a suit depending in said Court between Equitable Life Insurance Company of Iowa, a corporation, plaintiff, and Halsey, Stuart & Co. Inc., a corporation, defendant, a judgment was rendered against the said Halsey, Stuart & Co. Inc., defendant in the sum of $66,150.00, and said Halsey, Stuart & Co. Inc., defendant, has duly filed notice of appeal from said judgment;

Now, the Condition of the Above Obligation Is Such, that

if the said Halsey, Stuart & Co. Inc., shall prosecute its appeal with effect and satisfy the said judgment in full, together with costs, interest and damages for delay, if for any reason the appeal is dismissed or the judgment is affirmed, and shall satisfy in full such modification of the judgment and such costs, interest and damages as the Circuit Court of Appeals may adjudge and award, then the above obligation to be void; otherwise to remain in full force and virtue.

Halsey, Stuart & Co. Inc.
as Principal,
By Frank E. Weakly,
Vice President.

(Seal)

Attest:
Harry Smyth,
Assistant Secretary.

Seaboard Surety Company,
as Surety,
By Robert G. Marshall,
Attorney-in-fact.

(Seal)

Approved:
James H. Wilkerson,
U. S. District Judge.

July 10, 1939.

676 State of Illinois } ss.
County of Cook }

I, Ann M. Kehoe, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that Robert G. Marshall, Attorney-in-fact for the Seaboard Surety Company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as Attorney-in-fact, appeared before me this day in person and acknowledged that he signed, sealed and delivered the foregoing instrument as his free and voluntary act as Attorney-in-fact of the Seaboard Surety Company, for the uses and purposes therein set forth, And the said Robert G. Marshall being first duly sworn on oath says that he is Attorney-in-fact for the said Seaboard Surety Company, and that such authority has not been revoked or rescinded; that he knows the corporate seal of said Company; that the seal affixed to said instrument is such corporate seal, and that it was so affixed by order of the Board of Directors.

Given under my hand and Notarial Seal this 7th day of July, A. D. 1939.

Ann M. Kehoe,
Notary Public.

(Seal)

677 POWER OF ATTORNEY.

Know All Men by These Presents: That the Seaboard Surety Company, a corporation of the State of New York, by Henry G. Thole, its Vice-President, hath made, constituted and appointed and by these presents does make, constitute and appoint John F. Schmidt or Robert G. Marshall or A. M. Kehoe, its true and lawful Attorney-in-Fact, at Chicago, in the State of Illinois to make, execute and deliver on its behalf as Surety, bonds and undertakings, the penal sum of no one of which is, in any event, to exceed Two Hundred Fifty Thousand ($250,000.00) dollars and to be given for the following purposes only, to wit:

Guaranteeing the fidelity of persons holding places of public or private trust; guaranteeing the performance of contracts other than insurance policies; and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings or by law allowed.

Such bonds and undertakings for said purposes, when duly executed by the aforesaid Attorney-in-Fact, shall be binding upon the said Company as fully and to the same extent as if such bonds and undertakings were signed by the President and Secretary of the Company and sealed with its corporate seal.

This appointment is made under and by authority of a certain By-Law duly adopted by the Board of Directors of the said Company at a regular meeting of that body duly called and held on the 8th day of December, 1927, a duly certified copy of which By-Law is hereto attached, and is subject to revocation as therein provided.

In Witness Whereof, the Seaboard Surety Company has caused these presents to be signed by its Vice-President, and its corporate seal to be hereunto affixed duly attested by its Assistant Secretary, this 18th day of January, 1939, at New York, N. Y.

Seaboard Surety Company,
By Henry G. Thole,
Vice-President.

(Seal)
Attest:
A. G. Podlesney,
Assistant Secretary.

State of New York }
County of New York } ss.

On this 18th day of January, 1939, before me personally appeared Henry G. Thole, Vice-President of the Seaboard Surety Company, with whom I am personally acquainted, who, being by me duly sworn, said that he resides in the State of New York; that he is Vice-President of the Seaboard Surety Company, the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of the said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto as Vice-President of said Company by like authority.

678 Lillian Miller,
(Seal) *Notary Public.*

Bronx County Clerk's No. 73
Bronx County Register's No. 80-M-39
New York County Clerk's No. 469
New York County Register's No. 9-M-329
Commission expires March 30, 1939.

Be It Remembered That at the regular meeting of the Board of Directors, of the Seaboard Surety Company, duly called and held in the Borough of Manhattan, City of New York, on the 8th day of December, 1927, a quorum being present, the following By-Laws were duly adopted and are still in force and effect:

Article XI. Paragraph 6:

"Attorneys-in-Fact, Departmental Managers, Branch Managers, Agents, Clerks, and other employees may be appointed or engaged by the President or a Vice-President, subject to the control of the Directors, upon such terms and with such powers and duties as he may prescribe."

Article XVII, Paragraph I. "All policies, bonds, recognizances, stipulations and all underwriting takings shall be valid:

(a) When signed by the President, or the First Vice-President, or a Vice-President, or a Resident Vice-President, or a Departmental Manager and the Secretary, or an Assistant Secretary, or a Resident Assistant Secretary, or other duly authorized official or agent of the Company, and when sealed with the seal of the Company where required by law; or

(b) When executed by an Attorney-in-Fact."

State of New York }
County of New York } ss.

I, A. G. Podlesney, Assistant Secretary of the Seaboard Surety Company, have compared the foregoing By-Laws with the originals thereof, as recorded in the Minute Book of the said Company and do hereby certify that the same are correct and true transcripts therefrom.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the said Company, at New York, N. Y., this 18th day of January, 1939.

A. G. Podlesney,
(Seal) *Assistant Secretary.*

State of New York }
County of New York } ss.

I, A. G. Podlesney, Assistant Secretary of the Seaboard Surety Company, do hereby certify that the above and
679 foregoing is a true and correct copy of a power of attorney executed by said Seaboard Surety Company, which is still in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the said Company, at the City of New York, this 7th day of July, A. D. 1939.

A. G. Podlesney,
(Seal) *Assistant Secretary.*

68[redacted] Seaboard Surety Company

Home Office: New York, N. Y.

Financial Statement—December 31, 1938.

Assets

Stocks and Bonds (New York Ins. Dept. Valuation Basis)	$3,613,076.74
Cash in Office and Banks	509,491.13
Accrued Interest	15,617.26
Outstanding Premiums (Not over 90 Days)	215,086.98
Accounts Receivable	16,437.40
Total Admitted Assets	$4,369,709.51

Liabilities

Reserve for Unearned Premiums	$ 855,000.00
Claim Reserve	464,203.00
Voluntary Reserve	855,506.51
Other Reserves	195,000.00
Capital Stock	1,000,000.00
Surplus over all Liabilities	1,000,000.00
Total Liabilities	$4,369,709.51

(Surplus to Policyholders, $2,000,000.00)

Securities carried at $391,932.76 in the above statement are deposited for purposes required by law.

State of New York }
County of New York } ss.

I, B. R. Sheridan, Ass't. Secretary of Seaboard Surety Company, do hereby certify that the foregoing is a full, true and correct copy of the Financial Statement of said Company, as of December 31, 1938.

In Witness Whereof, I have hereunto set my hand and affixed the Company's seal at New York, N. Y., this 26th day of May, 1939.

B. R. Sheridan,
Assistant Secretary.

State of New York }
County of New York } ss.

On this 26th day of May, 1939, before me personally came B. R. Sheridan, to me known and known to me to be the person described in and who executed the foregoing certificate, and he acknowledged to me that he executed the same.

Lillian Miller,
(Seal) *Notary Public.*

Bronx County Clerk's No. 89
Bronx County Register's No. 54-M-41
New York County Clerk's No. 469
New York County Register's No. 1-M-313
Commission expires March 30, 1941.

Entered July 10, 1939.

681 And afterwards, to wit, on the 10th day of July, A. D. 1939, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

682 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—44353) * *

ORDER TO SEND UP ORIGINAL EXHIBITS.

This matter having come on to be heard on the motion of the attorneys for Halsey, Stuart & Co., defendant, for the entry of an order directing the Clerk of this Court to transmit to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit certain original exhibits, and it appearing to the Court that in this cause it is necessary and proper, in the opinion of the Court, that certain original papers and documents should be inspected by the Circuit Court of Appeals on appeal to said Court;

It Is Therefore Ordered and Directed that the following numbered exhibits be transmitted by the Clerk of this Court to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit at Chicago, Illinois, and returned after the disposition of said appeal to the Clerk of this Court:

683 Pltff's Ex. B-18—Real Estate Report of the Longview Company dated April 30, 1938.

Pltff's Ex. B-25—Being a rotogravure newspaper of scenes at Longview.

Pltff's Ex. B-26—Copy of advertisement placed in Saturday Evening Post in issue of April 2.

Pltff's Ex. B-27—Copy of advertisement placed in Saturday Evening Post January 20.

Pltff's Ex. B-28—Chamber of Commerce folder entitled "Longview".

Pltff's Ex. B-29—Copy of advertisement placed in Saturday Evening Post May 22.

Pltff's Ex. B-30—Pamphlet issued by The Long-Bell Lumber Company entitled "Long-Bell Practices Forestry".

Pltff's Ex. B-31—Magazine dated July, 1926, entitled "Longview Progress".

Pltff's Ex. B-32—Folder containing statements about Longview.

Pltff's Ex. B-33—The Long-Bell Lumber Company balance sheet and earnings statement for the year 1927.

Pltff's Ex. B-50—List of securities with valuations to be used by Insurance Companies in annual statements.

Pltff's Ex. B-51—Supplement to Annual Report of Equittable Life Insurance Company of Iowa dated December 31, 1936.

Pltff's Ex. B-52—Supplement to Annual Report of Equitable Life Insurance Company of Iowa dated December 31, 1938.

Pltff's Ex. B-53—Certified copy of Plan of Reorganization of The Long-Bell Lumber Company and final decree in reorganization proceedings.

Pltff's Exs. P-1 to P-16, both inclusive—Being aerial photographs of Longview.

Pltff's Exs. P-19 to P-32, both inclusive—Being photographs of various scenes in Longview.

Pltff's Ex. P-33—Being plat of Longview.

684 Pltff's Ex. P-47—Tax deed dated May 10, 1938, covering property sold for taxes in Longview.

Pltff's Ex. P-48—Large map of Longview showing land taken over by County upon failure to pay taxes.

Pltff's Ex. P-49—Schedule of assessments prepared by Walsh for County Treasurer of Cowlitz County.

Pltff's Ex. P-50—Annual report of sales of Longview Company to R. A. Long under date of December 31, 1927, and monthly report of sales for December, 1927.

Pltff's Ex. P-51—Monthly report of sales of Longview Company to R. A. Long under date of May 31, 1928.

Deft's Ex. 1—64th annual statement of Equitable Life Insurance Company of Iowa dated December 31, 1930.

Deft's Exh. 2—Digest of laws of the State of Washington covering creation of local improvement districts.

Deft's Ex. 8—Supplement to 69th annual report of Equitable Life Insurance Company of Iowa dated December 31, 1935.

Deft's Ex. 27—Auditor's report for Cowlitz County, Washington for year ended December 31, 1930.

Deft's Ex. 28—Report of State Auditor of Washington for Cowlitz County covering year May 1. 1930, to April 30, 1931.

Deft's Ex. 34—Booklet containing address of R. A. Long.

Deft's Ex. 35A-H—Sales memorandum relating to issue of Longview Local Improvement Districts Bonds prepared by Halsey, Stuart & Co.'s sales department.

Deft's Exs. 39-45, both inclusive, 49 and 50—Photostatic

pages from various financial journals referring to earnings of The Long-Bell Lumber Company.

Enter:

James H. Wilkerson,
Judge.

Dated, Chicago, Illinois, July 10, 1939.

Filed July 19, 1939.

685 And on, to wit, the 19th day of July, 1939, came the Defendant-Appellant by its attorneys and filed in the Clerk's office of said Court its certain Designation of Portions of Record, etc. in words and figures following, to wit:

686 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—44353) * *

DESIGNATION OF THE PORTIONS OF RECORD, PROCEEDINGS AND EVIDENCE TO BE CONTAINED IN THE RECORD ON APPEAL.

To the Clerk of the District Court of the United States, for the Northern District of Illinois, Eastern Division:

You are hereby requested to make a transcript of the complete record of the above entitled case, to be filed in the United States Circuit Court of Appeals for the Seventh Circuit, pursuant to notice of appeal to said United States Circuit Court of Appeals for the Seventh Circuit heretofore filed herein by Halsey, Stuart & Co., defendant, including in such transcript of record the following documents, papers, orders and exhibits:

1. Placita.
2. The original complaint filed by Equitable Life Insurance Company of Iowa, plaintiff.
3. Amended and supplemental complaint filed by Equitable Life Insurance Company of Iowa, plaintiff.

687 4. Motion of defendant, Halsey, Stuart & Co., in the nature of a demurrer to strike certain portions of plaintiff's amended and supplemental complaint and to strike a portion of plaintiff's prayer for relief.

5. Order of the United States District Court denying said motion of the defendant.
6. Answer of Halsey, Stuart & Co., defendant, to the amended and supplemental complaint of Equitable Life Insurance Company of Iowa, plaintiff.
7. Reply of Equitable Life Insurance Company of Iowa, plaintiff, to the answer of Halsey, Stuart & Co., defendant, to the plaintiff's amended and supplemental complaint.

8. Amendment to defendant's answer to plaintiff's amended and supplemental complaint filed April 4, 1939, by leave of Court.

9. Verdict of the jury returned April 21, 1939.

10. Judgment entered on the verdict April 21, 1939, against defendant, Halsey, Stuart & Co., for $66,150.00.

11. Defendant Halsey, Stuart & Co.'s written motion for new trial filed May 1, 1939.

12. Order of United States District Court entered May 20, 1939, denying defendant's motion for a new trial.

13. Complete transcript of proceedings at the trial, including:

(a) All motions made during the course of said trial, including motion of defendant at the close of plaintiff's evidence for a directed verdict, and the ruling of the Court thereon, and motion of defendant made at the close of all of the evidence for a directed verdict, and the ruling of the Court thereon, and all other motions and objections made during the course of said trial, and the rulings of the Court thereon.

(b) Testimony of all of the witnesses in narrative form.

688 (c) Copies of all exhibits received or offered in evidence other than such original exhibits as the Clerk of this Court has, by order of Court entered herein, been directed to transmit to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

(d) Written request filed by defendant with the Court, pursuant to Rule 51 of the Rules of Civil Procedure, requesting the Court to instruct the jury on the law, as set forth in said request.

(e) The instructions given by the Court to the jury and all objections made thereto.

14. Notice of appeal and certificate by the Clerk of the mailing of copy of said notice to the attorneys of record for the plaintiff.

15. Designation of the portions of record, proceedings and evidence to be contained in the record on appeal, showing proof of service of a copy thereof upon attorneys for plaintiff.

16. Supersedeas bond filed by the defendant.

17. Order of United States District Court approving supersedeas bond and directing that the same shall operate as a supersedeas.

18. Order directing the Clerk of the District Court to transmit to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit certain original exhibits.

19. Certificate of Clerk of United States District Court to the transcript of record.

Said transcript to be prepared as required by law and the rules of this Court and the Federal rules of civil procedure, and to be filed in the office of the Clerk of the
689 United States Circuit Court of Appeals for the Seventh Circuit at Chicago, Illinois, within forty (40) days from the date on which notice of appeal was filed herein by the plaintiff.

Poppenhusen, Johnston, Thompson & Raymond,
Attorneys for Halsey, Stuart & Co., Appellant.

Dated, Chicago, Illinois, July 19, 1939.

Service of the above designation of contents of record on appeal accepted and acknowledged this 19th day of July, 1939, also receipt of narrative statement of the testimony and copies of exhibits and reporter's transcript of the evidence and proceedings.

Gamble, Read and Howland, V.N.
Montgomery, Hart, Pritchard & Herriott, V.N.
Attorneys for Equitable Life Insurance Company of Iowa, Appellee.

690 Northern District of Illinois, } ss.
Eastern Division. }

I, Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Designation of Portions of Record filed in this Court in the cause entitled Equitable Life Insurance Company of Iowa, a corporation, *vs.* Halsey, Stuart & Co., a corporation, No. 44353, as the same appear from the original records and files thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 31st day of July, A. D. 1939.

Hoyt King,
Clerk.

(Seal)

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 648, inclusive, contain a true copy of the printed record, printed under my supervision and filed on the twenty-fourth day of August, 1939, upon which the following entitled cause was heard and determined:

Cause No. 7032.

Equitable Life Insurance Company of Iowa,
Plaintiff-appellee,

vs.

Halsey, Stuart & Company,
Defendant-appellant,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 26th day of July, A. D. 1940.

Kenneth C. Carrick,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

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At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the fourth day of October, in the year of our Lord one thousand nine hundred and thirty-eight, and of our Independence the one hundred and sixty-third.

Equitable Life Insurance Company of Iowa, *Plaintiff-appellee,* vs. Halsey, Stuart & Co., a corporation, *Defendant-appellant.*	Appeal from the District Court for the Northern District of Illinois, Eastern Division.

7032

And, to-wit: On the fourth day of August, 1939, there was filed in the office of the Clerk of this Court, a certificate to exhibits, which said certificate is in the words and figures following, to-wit:

United States of America,
Northern District of Illinois, } ss:
Eastern Division.

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division.

Equitable Life Insurance Company of Iowa, a corporation, *Plaintiff,* vs. Halsey, Stuart & Co., a corporation, *Defendant.*	In Law, No. 44353.

CERTIFICATION OF TRANSMITTAL OF ORIGINAL EXHIBITS.

Hoyt A. King, Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, certifies that pursuant to the order entered by the Honorable James H. Wilkerson, Judge of the United

States District Court for the Northern District of Illinois, Eastern Division, in the above entitled cause, he has certified and transmitted to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit the following numbered exhibits, to be returned after the disposition of said cause to the Clerk of the United States District Court:

Pltff's Ex. B-18—Real Estate Report of the Longview Company dated April 30, 1938.

Pltff's Ex. B-25—Being a rotogravure newspaper of scenes at Longview.

Pltff's Ex. B-26—Copy of Advertisement placed in Saturday Evening Post in issue of April 2.

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Pltff's Ex. B-32—Folder containing statements about Longview.

Pltff's Ex. B-33—The Long-Bell Lumber Company balance sheet and earnings statement for the year 1927.

Pltff's Ex. B-50—List of securities with valuations to be used by insurance companies in annual statements.

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Deft's Ex. 2—Digest of laws of the State of Washington covering creation of local improvement districts.

Deft's Ex. 8—Supplement to 69th Annual Report of Equitable Life Insurance Company of Iowa dated December 31, 1935.

Deft's Ex. 27—Auditor's report for Cowlitz County, Washington, for year ended December 31, 1930.

Deft's Ex. 28—Report of State Auditor of Washington for Cowlitz County covering year May 1, 1930, to April 30, 1931.

Deft's Ex. 34—Booklet containing address of R. A. Long.

Deft's Ex. 35A-H—Sales memorandum relating to issue of Longview Local Improvement Districts Bonds prepared by Halsey, Stuart & Co.'s sales department.

Deft's Exs. 39-45, both inclusive, 49 and 50—Photostatic pages from various financial journals referring to earnings of The Long-Bell Lumber Company.

All of which Exhibits were filed in the office of the Clerk of said District Court on July 11, A. D. 1939.

Hoyt King,

(Seal) *Clerk of the United States District Court for the Northern District of Illinois, Eastern Division.*

Dated, August 3rd, 1939.

Endorsed: Filed August 4, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the seventh day of August, 1939, there was filed in the Office of the Clerk of this Court, an appearance for appellant, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 7032 October Term, 1938.

Equitable Life Insurance Company of Iowa,
Plaintiff-Appellee,

vs.

Halsey Stuart & Co.,
Defendant-Appellant.

The Clerk will enter my appearance as counsel for the Defendant-Appellant.

Edward R. Johnston,
11 So. La Salle St.,
Chicago, Ill.

Endorsed: Filed August 7, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the twenty-first day of September, 1939, there was filed in the office of the Clerk of this Court, an appearance for appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 7032. October Term, 1939.

Equitable Life Insurance Company of Iowa,
Plaintiff-Appellee,

vs.

Halsey Stuart & Co.,
Defendant-Appellant.

The Clerk will enter our appearance as Counsel for the Plaintiff-Appellee.

Irving Herriott,
Norman H. Pritchard,
W. Ward Smith,
120 South LaSalle Street,
Chicago, Ill.

Endorsed: Filed September 21, 1939. Frederick G. Campbell, Clerk.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the third day of October, in the year of our Lord one thousand nine hundred and thirty-nine, and of our Independence the one hundred and sixty-fourth.

And afterwards, to-wit: On the seventeenth day of January, 1940, the following further proceedings were had and entered of record, to-wit:

Wednesday, January 17, 1940.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.

Equitable Life Insurance Company of Iowa,
Plaintiff-appellee,
7032 *vs.*
Halsey-Stuart & Company,
Defendant-appellant.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Edward R. Johnson, counsel for appellant, and by Mr. Alden B. Howland, counsel for appellee, and the Court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the twenty-seventh day of April, 1940, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 7032. OCTOBER TERM, 1939, APRIL SESSION, 1940.

EQUITABLE LIFE INSURANCE COMPANY OF IOWA, *Plaintiff-Appellee,*
vs.
HALSEY, STUART & CO., a Corporation, *Defendant-Appellant.*

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

April 27, 1940.

Before EVANS, SPARKS and TREANOR, *Circuit Judges.*

SPARKS, *Circuit Judge.* This is an appeal from a judgment for $66,150 entered in an action in deceit to recover damages for alleged misrepresentations and concealments of fact. These were alleged to have induced appellee to purchase over $300,000 of bonds which subsequently resulted in an alleged loss of $250,157 to appellee. Appellant alleges error as to various rulings on evidence, instructions to the jury, and failure to grant its motions for a directed verdict and for a new trial.

The bonds in question were issued during the years 1925 to 1927 by a number of local improvement districts of the city of Longview, Washington. The districts were organized in accordance with the statutory provisions of that State which permitted the issue of such bonds, payable out of taxes collected on special assessments levied by the districts against the lands within each district benefited by the improvement. The city itself was built by the Long-Bell Lumber Company on part of an 11,000 acre tract which it bought in 1922 at the junction of the Columbia and Cowlitz rivers. This tract had formerly been used for farming and grazing.

The Long-Bell Lumber Company, hereafter referred to as Long Bell, was a Missouri corporation which, prior to

the period involved in this litigation, had carried on its business operations for the most part in the South. In 1919 and 1921, it had purchased extensive timber acreage in the Northwest, in Oregon and Washington. In order to provide for the large number of employees it expected to use in connection with its milling and manufacturing operations, it determined to build the new city near the rivers. The site chosen was subject to periodic overflows from the rivers, hence it was necessary to build a system of dikes, which work was done by Long Bell or its subsidiaries. The cost of the work was then funded through the organization of a diking district in accordance with the provisions of the Washington statute. The district issued its bonds and delivered them to Long Bell to pay for the work. Long Bell then proceeded, through one or more subsidiaries, to lay out the city of Longview, which was to be a model city, with large parks and civic centers. Several public buildings were donated by R. A. Long, President of Long Bell. The city was planned on a scale large enough to accommodate a population of many more than the 15,000 or 20,000 expected to result from its own operations. An elaborate zoning system was laid out on a scale to provide for development in proportion to the contemplated increase of population. Extensive improvements were constructed such as paving, sidewalks, curbs and sewers. All the work was done by Long Bell and later taken over by the local improvement districts of which there were twenty-two. Only two of these, #11 and #19, covered the entire city, and all the others were for smaller units.

Beginning as early as 1922, and perhaps some time earlier, appellant, Halsey, Stuart and Company, had been closely associated with Long Bell. It had underwritten first mortgage bonds of that company totalling $20,000,000, acting, according to a statement contained in a prospectus pertaining thereto, as fiscal agent for it. It had also underwritten an issue of $3,250,000 of bonds of a railroad owned by a subsidiary of Long Bell and guaranteed by Long Bell, as well as the $3,225,000 issue of diking district bonds. When the local improvement district bonds were issued, each series was sold by Long Bell to Halsey, Stuart, for sale to the latter's customers. Halsey, Stuart knew that all of these bonds bore the guaranty of Long Bell. Halsey, Stuart not only distributed all the afore-

mentioned obligations in the first place, but it also furnished practically the only market for them, buying them in for resale to its customers. A letter from one of its officers to Long Bell commented on the fact that, "In the last analysis we are the market on Long-Bell securities except possibly very small amounts * * *." This letter related to a controversy over compensation claimed to be due Halsey, Stuart for handling a volume of about $55,000,000 of bonds of Long Bell, and indicated that appellant expected to be reimbursed by the latter for its expenses in handling the securities.

Early in May, 1930, B. C. Kelley, local representative of appellant in Des Moines, Iowa, approached appellee with a view to selling it some of the improvement district bonds. Appellee, a life insurance company incorporated in Iowa, had previously made purchases of over $1,000,000 in securities from appellant for its investment portfolio. Under the provisions of the Iowa statutes, insurance companies were permitted to invest their policy reserves in municipal securities, but not in obligations of private corporations. In 1927, Frank Wood, appellant's sales manager in charge of the Iowa-Nebraska-Colorado territory, had participated in the compilation of statistics preparatory to the drafting of an amendment to the Iowa statute relating to the investment of policy reserves, hence was familiar with the fact of its restrictions. Appellant also knew that appellee was interested in purchasing securities only for investment, and not for speculation or resale.

When Kelley proposed the purchase by appellee of the bonds in question, he delivered to F. W. Hubbell, a vice-president of appellee and in charge of its investment program, a number of documents pertaining to the issue. These consisted of an offering circular dated April 7, 1927, for a bond issue of $785,734; a tabulation of the number of assessment districts in Longview with the amount of bonds issued and redeemed by each, and the amount outstanding; copies of several full page advertisements of the city of Longview which had appeared originally in the Saturday Evening Post; some pamphlets issued by the Chamber of Commerce containing glowing descriptions of the city; and a balance sheet of Long Bell dated January 1, 1927.

The first item furnished, the Halsey, Stuart prospectus, was based on information submitted by Long Bell. It con-

tained a description of the city of Longview, as being situated at the confluence of the Columbia and Cowlitz rivers, having a frontage of 7½ miles along the former, and being a port of call for ocean-going vessels between Portland and the Pacific Ocean, with facilities for the largest cargo ships. It was also stated that: "Because of its natural advantages and proximity to the timber stands of the Long-Bell and Weyerhaeuser interests, Longview was selected as the site for the vast lumber manufacturing plants of these companies * * *. Manufacturing plants have also been erected by other concerns, including the Longview Concrete Pipe Co., the Pacific Straw, Paper and Board Co., and Magor Car Corp., the Standard Oil Co., Longview Paint and Varnish Co. and the Central Mill Works. The first unit of the plants of the Longview Fibre Co., to cost 2½ million dollars, is now well under way. Longview, with a population of 12,000, has now more than 36 miles of concrete paved streets, 115 miles of graded and gravelled streets, 71 miles of concrete sidewalks, 56 miles of water mains, and 48 miles of storm and sanitary sewers. The city has been laid out along model lines, and has excellent schools, a motorized fire department, a thoroughly modern hospital, library, community, Y. M. C. A. and other public buildings. Two banks report combined deposits of $1,500,000 and over 4,500 depositors."

This prospectus contained the following clause: "All statements herein are official or are based on information which we regard as reliable, and while we do not guarantee them, we ourselves have relied upon them in the purchase of this security." The prospectus also contained the statements: "Exempt from Federal Income Taxes. Eligible as investments of mutual savings bank and insurance companies organized in the State of Washington," and "The payment of principal and interest on these bonds is unconditionally guaranteed by endorsement by the Long-Bell Lumber Company."

Another description, to which Hubbell said he gave considerable attention, from a Saturday Evening Post advertisement, stated: "The thoroughly modern, electrically operated manufacturing plants shown in the above sketch are in Longview, Wn. They produce 1,800,000 feet of Douglas Fir lumber a day. The buildings cover 72 acres. Six ocean-going freighters can load at one time at the

Long-Bell docks. The equipment of the plants includes every modern device for producing good lumber economically."

From these various descriptions, Hubbell testified that he was led to and did believe that the plants described were all located within the city of Longview. He knew then that District #19 covered practically the entire city.

The tabulation showed that of a total of $3,149,726 of bonds issued by twenty districts beginning September, 1925, $1,136,726 had been called up to May, 1930. These included $253,699 of the $908,699 issued by District #11 in May, 1926, and $137,104 of the $464,104 issued by District #19 in January, 1927.

Hubbell and Kelley both testified that the former asked for information about Long Bell as well as the city. In furnishing the information, Kelley turned over the file from appellant's Chicago office, containing all the data relating to the various issues, and also a financial report of Long Bell as of January 1, 1930. This 1929 financial report included a letter to stockholders signed by the President of Long Bell, dated March 12, 1930, stating:

> "* * * General conditions during the closing months following the break in the stock market very seriously affected the consumption of lumber, which was reflected in our business.
>
> "The last two weeks have shown some increase in demand, but prices have not improved and indications are not very flattering for the immediate future. * * * What the last two quarters of the year will be depends largely upon crops and general business conditions."

Wood, in making the formal offer of the bonds, wrote in a letter of May 14, 1930:

> "* * * We believe you have before you practically all the data covering this issue of bonds, but if you have any questions in mind, we shall be pleased indeed to have you call Mr. Kelley or this office for anything that you may need.
>
> "You observe, of course, that this city has no funded debt, other than these Improvement Bonds, and that the original debt has been materially reduced through retirement and maturity."

Hubbell testified that Kelley furnished everything for which he asked in the way of information either from ap-

pellant's office, from Longview, or from Long Bell. He made no independent investigation of the city, being two thousand miles away from it, but relying upon the data furnished by appellant's agents, recommended to appellee the purchase of the bonds which appellee bought as follows:

May	20, 1930,	$ 85,000	par value, at	$ 84,787.50
May	29, 1930,	15,000	par value, at	14,962.50
Sept.	29, 1930,	26,000	par value, at	25,935
Oct.	10, 1930,	9,000	par value, at	8,977.50
Oct.	21, 1930,	200,000	par value, at	199,500
Oct.	30, 1930,	2,000	par value, at	1,995.50

Practically all the bonds were bought at 99.75. They bore interest at the rate of 6% per annum. $279,000 of the bonds were in Districts #11 and #19, the two districts whose limits coincided with those of the city. At the time of the purchases the city had a population of between 10,000 and 15,000 and there was contained within its corporate limits a great deal of vacant, unimproved, unplatted property. During the time appellee held the bonds it received $130,337 interest on them.

While it was stated in the various circulars and other advertising matter that a number of industrial plants were located in Longview, in fact all of those mentioned lay outside the limits of the city, hence their properties were not subject to assessment to pay off the bonds. A further misstatement contained in the advertising was the fact that the city had a frontage of 7¼ miles along the Columbia river. The fact was that in 1925, the corporate limits did not touch the Columbia river. (They were subsequently enlarged, in 1926, to include a strip of land down to the Public Dock Property.)

The officer of appellant who assembled the material for and prepared these circulars testified that he had no other information regarding the facts, having relied on information furnished by Long Bell since they had handled the bonds only on the basis of the Long Bell guaranty rather than on their security as municipal bonds—"Under the Washington laws governing the issuance of Local Improvement District Bonds, we knew from records available, generally, that the bonds issued under those laws, were having difficulty, and we would not have considered these at all * * predicated simply upon that security." While they did inquire as to the valuation of the lands subject to

assessment, they did not consider the low value of any significance, again because they relied only on the Long Bell guaranty. In response to an inquiry from one of appellant's branch offices for information regarding each particular district, the officer quoted above, stated by telegram: "We haven't the data but with exception one or two districts showing would probably be disappointing from point of population area valuations etc. and for this reason we rely entirely on Long Bell guaranty."

Although Kelley knew of the reliance on this guaranty rather than on the properties assessable for payment of the bonds, there is nothing of record to indicate that this was disclosed to Hubbell. In fact, Kelley testified: "My impression is that Halsey, Stuart and Co. had bought these Longview * * Bonds solely on the guaranty of the Long Bell Lumber Co., but I have no recollection of having told Mr. Hubbell that there was no justification for Halsey, Stuart and Co. being in this financing except for that guaranty."

Appellee contends that in addition to the actual misstatements of fact contained in matter used by appellant to promote the sales, other facts having a very material bearing on the security of the bonds were not revealed to appellee. It was not shown, for instance, that Long Bell, the guarantor of the bonds, owned over 70% of the lands within the corporate limits. Appellant's president did not deny knowing this fact. He said "I may have known (it)." This meant that in addition to being liable on the guaranty, Long Bell was also directly liable for the assessments on the lands which it owned, many of which were unplatted and unimproved and subject to very burdensome assessments for both diking district and local improvement bonds. However, the record is not clear that appellant knew this.

The foregoing misstatements had to do with the value of what might be called the direct security back of the bonds, the lands liable for assessment to pay the bonds. As to these facts, appellant disclaimed any liability, for the reason, as stated above, and stated by several witnesses, that it handled the bonds on the basis of the Long Bell guaranty without which it would not have handled them at all. As to the value of this guaranty, it was shown that in the year 1930, the lumber industry generally was in rather a precarious condition, and that commercial banks had all adopted the policy of closing out the accounts of lumber

and timber companies. As early as January, 1930, plans were under consideration looking toward a strengthening of the industry generally by means of merger of various companies. Long Bell had paid no dividends on its Class A stock since September, 1927, and correspondence exchanged between it and appellant shows that early in 1930, at least one of the commercial banks which had previously extended lines of credit totalling $9,000,000 had refused to continue its credit and others were extremely critical. Early in May the Equitable of New York had suggested that special arrangements be made to put the banks in a more secure position. While appellant did not participate in the discussions regarding this matter, it appears that it was kept informed at all times, and that it learned of the plan under consideration some time between May 15 and June 30, 1930. It was also shown that Stuart wrote to Long in April, 1930, to the effect that Long Bell credit was selling in the market on such a basis as to make it difficult, if not too costly to undertake the sale of notes secured by the pledge of participation certificates in a certain timber contract. Stuart also suggested, by letter of May 5, 1930, that Long Bell approach a certain New York firm for such financing, saying that they might be organized to make loans where the securities were not immediately marketable, but that they would probably demand a large commission or bonus.

During May of 1930, it became publicly known that Long Bell had sustained substantial operating losses from the beginning of the year. This was shown by evidence introduced by appellant consisting of photostatic copies of pages of The Chicago Journal of Commerce for May 20, 1930, and the Annalist for May 23, 1930, both of which carried the report of a loss on the part of Long Bell of $305,041 for the quarter ending March 31, 1930, as compared with a deficit of $27,702 for the same period in 1929. Appellee was a subscriber to both of these publications as well as others which carried the same information.

The discussions over the extension of the commercial banks' lines of credit culminated, in October, 1930, in the creation of a new corporation, the Long-Bell Lumber Sales Corporation, to which were transferred as of November 1, 1930, all the unencumbered assets of Long Bell. In exchange for these assets, the Sales Corporation delivered to Long Bell all of its capital stock. The arrangement was that for the future, all bank loans were to be

made to the Sales Corporation to be secured by pledge of the transferred assets.

Appellee first learned in June, 1931, that all the facts regarding Longview and Long Bell were not as represented to it at the time of the purchase of the bonds, when it sent a representative to the west coast to investigate a number of securities owned by it. He then learned and reported to appellee that the manufacturing plants which had been stated to be in Longview were outside the city limits, and that the city did not have the frontage on the Columbia river. He also reported that the Longview Company, a subsidiary of Long Bell, owned from 60 to 75 per cent of the property within the city. Shortly after this trip, appellee learned of the assessments on the city lots to pay the diking district bonds.

In 1934, a voluntary petition for reorganization under 77B of the Bankruptcy Act was filed by Long Bell, resulting in the confirmation of a plan according to which Long Bell was relieved of the guaranty of the bonds held by appellee, and in exchange for such guaranty, appellee received common stock in the reorganized corporation. Foreclosure proceedings were instituted by the Treasurer of the county in which Longview was located, upon default in payment of general taxes for the year 1931, and these resulted in the sale of the lands charged with the liens of the improvement district bond assessments free of such liens. Appellee was then left with only the common stock of the reorganized Long Bell Company representing the greater part of its investment. While some of the bonds had been redeemed prior to the beginning of this action, appellee still held at that time, bonds of the par value of $308,000, on which it claimed a loss of $250,157. These bonds were carried on appellee's books at par value until after the suit was started. By the time of trial, more of these had been redeemed, leaving appellee then with $266,000 par value in return for which it received 8.4 shares of common stock of the reorganized corporation for each $1,000 bond. This stock was listed as of January 4, 1939, at 12 bid, 13 asked.

Of the $266,000 of bonds still held at the time of trial, $177,000 were in District #11; $47,000 in District #19; and $42,000 in other districts not coterminous with the city.

Appellant attacks the judgment for $66,150 on the ground that there was no competent evidence to prove that

it willfully, maliciously, fraudulently and falsely made the representations alleged to have induced appellee to purchase the bonds; that it was under no duty to disclose to appellee all the facts within its knowledge concerning the bonds, the city, or Long Bell; that there was no competent evidence to prove the willful, false, and fraudulent concealment of material facts with respect to the city, the bonds, or Long Bell to induce the purchase of the bonds; that the court erred in instructing the jury on the issue of damages, and in permitting incompetent evidence on that issue, and that there was no competent evidence in the record to sustain the damages awarded by the jury; and that the court erred in its instructions.

The essential elements required to sustain an action for fraud and deceit have been frequently stated by the courts: That a representation was made as a statement of fact, which was untrue and known to be untrue by the party making it, or else recklessly made; that it was made with intent to deceive and for the purpose of inducing the other party to act upon it; and that he did in fact rely on it and was induced thereby to act to his injury or damage. *McGrath* v. *Dougherty* (Iowa), 275 N. W. 466; *Hubbard* v. *Weare*, 79 Iowa 678; *Beach* v. *Beach*, 160 Iowa 346; *Gipp* v. *Lynch*, 285 N. W. 659; 23 Am. Jur. on Fraud and Deceit, § 20. Without the concurrence of all of these elements there can be no actionable fraud. None can be presumed, but each must be strictly proved, and the burden is on the plaintiff to establish the fraud by clear, convincing and satisfactory evidence. *Eckhardt* v. *Bankers Trust Co.* (Iowa), 273 N. W. 347. The question then is, did the facts here presented, when considered together, spell out all the elements necessary to maintain the action?

Appellee contends that the evidence justified a finding by the jury that appellant made false and fraudulent representations with respect to:

The location of the industrial plants,

The frontage of the city on the Columbia river,

The existence and extent of securities outstanding at Longview "other than these Improvements Bonds," and

The financial condition of Long Bell and its subsidiaries.

As to the first two which we think constitute the only actual *misstatements* in the record, appellant expressly

guarded itself against liability for possible inaccuracy by the hedge clause in the prospectus as set forth above. It is true that no such clause is shown as to these same statements contained in the various advertisements, pamphlets, and the like, which were turned over to appellee for its consideration in connection with the offer of the bonds. However, the statements differ in no material respects from those of the prospectus, and we see no reason why appellant should be held accountable for assertions obviously put out by others, when if had expressly disclaimed responsibility for those same statements in the literature put out by itself, and when there is no proof that appellant knew of the falsity of the statements. Although appellee sought to show that several of appellant's agents must have known of their falsity since they had visited Longview, there was no actual proof of such knowledge, and neither the jury nor this court would be justified in inferring it from the facts presented. Therefore the hedge clause constituted a valid defense to the charge of misrepresentation as to the location of the plants and the river frontage, and the jury should have been so instructed.

The third item as to which appellee charges falsity relates to the diking bonds which constituted a prior lien upon the lands subject to assessment for payment of the improvement district bonds. While appellant made no reference to these bonds at all, appellee charges that the letter of Wood, "We believe you have before you all the data," and "You observe, of course, that this city has no funded debt, other than these Improvement Bonds," constituted a false statement that the city had no other debts than these bonds. In fact, the city had no funded debt whatever. This was certainly a careless statement for a representative of appellant to make, implying as it did that the bonds involved were part of the funded debt, and that there were no other obligations on the part of the city which were equal or superior to them. However, Hubbell admitted that he knew that the bonds did not constitute a funded debt, and he also admitted that he had read a paragraph in the Long Bell balance sheet referring to the accrued assessments on Diking and Improvement District bonds guaranteed by Long Bell, and to the fact that the former were issued to take up warrants issued in payment for construction work, and that he knew that there was a consolidated diking district, but he

had never thought to ask where the diking system was located. He also admitted that until after 1932 or 1933 he had never investigated the possibility of overlapping municipal districts. In view of all these facts, we are of the opinion that the materiality of the letter and its possible implications is trivial.

The misrepresentation with respect to the financial condition of Long Bell, if any, must be built up from the furnishing of a balance sheet as of December 31, 1929, without disclosure that it did not correctly reflect the actual financial condition of the company from May to October, 1930, the period in question and to which it was supposed to apply. It is not suggested that this statement was of itself false in any respect. Moreover, that report contained within its own four corners what might well have served as notice of financial difficulties of the company—we refer to a paragraph in the letter to stockholders dated March 12, 1930, which accompanied the balance sheet, stating that general conditions following the stock market break had seriously affected the consumption of lumber which was seriously reflected in Long Bell business, and that what the last two quarters of the year would be, depended upon crops and general business conditions. It is inferable that if appellant had been very anxious to conceal the condition of Long Bell it might well have removed this letter from the accompanying statement, calculated as it was to raise questions as to the then position of the company. However, it went to appellee along with all the other items for which Hubbell asked—he admitted that he had been furnished everything for which he asked, and Kelley's testimony that Hubbell asked specifically for the "annual report covering Long-Bell Lumber Company's operations for the year ended 1929," was uncontradicted.

Hubbell stated that he did not recall requesting any further information as to the purchases made subsequent to the first one in May, 1930. However, within a few days of that purchase, it became a matter of public knowledge that Long Bell had sustained a substantial operating loss for the first quarter of the year 1930. Had appellee made use of the financial news reports available in its own offices it would have learned of this fact long before the subsequent purchases were made. Not only did it not make any use of these sources of information, but it did not even inquire of appellant as to whether or not the sit-

uation had changed in any way. The only evidence of concealment was that further facts were not voluntarily disclosed. Under these circumstances we think the duty to disclose all its information subsequently did not devolve upon appellant. Appellee relies upon the case of *Noble* v. *Renner,* 177 Iowa 509, 159 N. W. 214. There the court held the vendor liable in fraud for failing to divulge facts which occurred between an investigation by the buyer of the real estate involved, and the actual purchase. The vendor sold a farm guaranteed to contain a certain acreage, when in fact a considerable portion of it had been cut away by the action of a river after the buyer inspected it, although the vendor had told him that there was no more such cutting. We consider this inapplicable to the facts here involved.

We think the facts as shown by the record fall short of those required to make out a case of fraudulent concealment. The cases which hold that failure to disclose material information constitutes fraudulent concealment sufficient to maintain an action for fraud generally are based on such facts as the existence of a fiduciary relationship between the parties, or the doing of some affirmative acts to prevent the other party from making adequate investigation to discover the true facts.

> "Concealment becomes a fraud where it is effected by misleading and deceptive talk, acts, or conduct, where it is accompanied by misrepresentations, or where, in addition to a party's silence, there is any statement, word, or act on his part which tends affirmatively to a suppression of the truth, to a covering up or disguising of the truth, or to a withdrawal or distraction of a party's attention from the real facts; then the line is overstepped, and the concealment becomes a fraud. Such conduct is designated 'active concealment,' and it produces the same result in law as positive misrepresentation." 23 Am. Jur. on Fraud and Deceit, § 93.

Here we have no fiduciary relationship—the parties were obviously dealing at arm's length, hence there was no legal duty imposed upon appellant to disclose all it knew. The only misleading act upon which a duty to speak might be predicated is the Wood letter, "We believe you have before you all the data." And yet even this was accompanied by "but if you have any questions

in mind, we shall be pleased indeed to have you call Mr. Kelley or this office for anything that you may need." We think this cannot be construed as a deliberate attempt to throw appellee off its guard or mislead it into failing to pursue its inquiries further.

Appellee quotes from the Iowa case of *Foreman* v. *Dugan*, 205 Iowa 929, 218 N. W. 912:

> "It is undoubtedly a correct rule of law that one who is called upon to speak in regard to a subject-matter may be guilty of false representation by evasion, or by speaking half the truth, or failing to speak fully and truthfully where a duty rests upon him to speak. In other words, one may be guilty, under certain circumstances, of false representations in failing to disclose facts within his knowledge. Silence on a subject may constitute, under certain circumstances, a false representation, quite as much as spoken words. * * But, on the other hand, in determining whether there are actionable false and fraudulent representations, consideration must be given to the situation of the parties, the matters with which they are dealing, and the subject-matter in hand."

This language appears to us to be peculiarly in point as related to the facts of the case at bar. It is to be noted first that the rule comes into play only when one is called upon to speak. But before one may invoke the rule he must prove the duty to speak, arising out of the special circumstances relied upon. Here, considering all the evidence in the light most favorable to appellee, we think it falls short of proving the circumstances necessary to impose upon appellant the absolute duty of disclosing all the facts it knew of the financial condition of Long Bell.

Appellant's failure to disclose to appellee the fact that it had handled the bonds only on the basis of the Long Bell guaranty and would not have dealt with them at all without that guaranty presents a more perplexing question. This, in effect, means that, whereas appellant approached appellee for the purpose of inducing the purchase of municipal bonds, knowing that the latter was authorized by the statute to handle only that type of security and not the obligations of a private corporation, and that it was purchasing only for investment, what it actually offered was a security which it had handled solely as a corporate one. But is such failure to disclose actionable? The

bonds were, in fact, municipals, regardless of the basis on which appellant had handled them. It was stated on the prospectus that they were eligible for investment for Washington companies supposedly similar to appellee in organization and requirements—at least our attention is not called to any more rigid restriction imposed by the Iowa statute than by the Washington.

Moreover, in view of the very unusual circumstances surrounding the building of this city, we are of opinion that it would have been strange if appellant had placed great reliance upon the security of the benefited properties rather than on the guaranty. While the prospectus itself does not call attention to the fact, it cannot be said that there was in the other advertising data furnished appellee any attempt to conceal the fact that there was not even the nucleus of a city there prior to the purchase of the tract for the express purpose of locating a city thereon. The acreage had been used for farming and grazing up to that time, and out of this acreage the Long Bell subsidiary prepared to establish a city. All of the descriptive literature furnished to appellee points to the fact that it was a very grandiose scheme, the success of which depended upon a very rapid industrial development, and particularly that of the lumber industry, since that obviously was the basic industry of the area. Hence the necessity of the corporate guaranty which appellant demanded before handling the security. All the facts pointed toward this, and it seems to us that any really thoughtful consideration on the part of appellee would have suggested it, and would have suggested more pertinent questions such as the success of the development, the population in 1930, the valuation of the benefited properties and the amount of unsold land. It appears that when appellee did become suspicious, and made inquiries concerning the city, it was able to find out the facts at once, and there is nothing to suggest why it could not have found them with equal facility before it purchased the bonds. Appellant here calls attention to the fact that it furnished absolutely everything for which appellee asked, and the record amply bears this out.

Hubbell admitted on cross-examination that he knew that Long Bell having built the city originally still owned a large part of the land, and that it would be a natural conclusion that when they laid out the city and

turned it from farm land into a city, it would originally start out as Long Bell or Long Bell subsidiary property. He also knew that when a certain circular was put out some years after the founding of the city it was still spread out over a considerable amount of territory and there appeared to be a great deal of vacant property in one subdivision in particular. The record does not indicate that appellant had any more knowledge than appellee that this vacant, unimproved land still belonging to Long Bell amounted to from 60 to 75 per cent of the total. Certainly there is nothing of record to indicate that appellant deliberately withheld information as to this from appellee. Unquestionably it detracted from the value of the security, for vacant, unimproved land is not as good a subject for assessment as is built-up land in use. But appellee should have realized as well as appellant that the value of the bonds as municipals was subject to question. This probably accounted for the high interest rate they bore in comparison with other municipal securities.

We conclude that there was a failure of evidence to prove the concurrence of all the essential elements of an action for fraud. We are not unmindful of the rule that in determining the sufficiency of the evidence to support the verdict of the jury, all conflicts must be resolved in favor of the jury's finding, and that the party in whose favor the verdict is returned is entitled to the benefits of all inferences which may be fairly drawn from the testimony. This is not to say that in an action for fraud the plaintiff is entitled to prove his case by drawing inference from inference, and substituting non-disclosure for deliberate misrepresentation where the facts showed no duty to disclose. We have studied the cases cited by appellee upholding actions for fraud, particularly those involving sales of corporate securities. All of them involve obvious and flagrant falsities under circumstances permitting of no doubt as to the makers' knowledge.[1] Most of the cases were cited by appellee to support its proposition that the jury may consider subsequent events in determining the amount of damages. However, we may also consider

1. See *Hotaling* v. *Leach and Co.*, 214 N. Y. S. 451, affirmed 247 N. Y. 84, 159 N. E. 870; *Downey* v. *Finucane*, 205 N. Y. 251, 98 N. E. 391; *Addis* v. *Swofford*, 180 S. W. 548 (Mo.); *Hindman* v. *First National Bank*, 112 Fed. 931; *Morrow* v. *Franklin*, 233 S. W. 224 (Mo.); *Paul* v. *Cameron*, 256 N. W. 11 (Neb.); *Baumchen* v. *Donahoe*, 215 Ia. 512, 242 N. W. 533.

them in relation to the nature and degree of the proof required to sustain the charge of fraudulent misrepresentation which must arise before there is any question as to the amount of damages for the fraud. It is unnecessary for us to discuss the facts of any of these cases except to say that a comparison of their facts with those relied upon in the case at bar indicates that the proofs here relied upon are insufficient to sustain the action, and the case should not have been submitted to the jury.

The judgment is reversed and the cause remanded with directions to grant a new trial.

Endorsed: Filed April 27, 1940. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the twenty-seventh day of April, 1940, the following further proceedings were had and entered of record, to-wit:

Saturday, April 27, 1940.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.

Equitable Life Insurance Company of Iowa, *Plaintiff-appellee,* vs. Halsey-Stuart & Company, *Defendant-appellant.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

7032

It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed with costs; and that this cause be, and the same is hereby remanded to the said District Court with directions to grant a new trial.

And afterwards, to-wit: On the fifteenth day of May, 1940, there was filed in the office of the Clerk of this Court a petition for rehearing, which said petition for rehearing is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Equitable Life Insurance Company of Iowa, *Plaintiff-Appellee.* *vs.* Halsey, Stuart & Co., a Corporation, *Defendant-Appellant.*	No. 7032.

APPELLEE'S PETITION FOR REHEARING.

Equitable Life Insurance Company of Iowa, appellee, respectfully petitions this court to withdraw its opinion filed April 27, 1940, and to grant a rehearing of this cause on the following grounds and for the following reasons, to-wit:

1. The court has overlooked, misconstrued or disregarded the record testimony which justified a finding by the jury that appellant well knew the falsity of the representations set forth in the offering circular, and other data, stating that the City of Longview has a "frontage of seven and one-quarter miles upon the Columbia River," and that "the Long-Bell, Weyerhaeuser and other industrial plants are in Longview, Wn." The making of such positive representations justified a finding that the statements were recklessly made, in flagrant disregard of appellant's actual knowledge of the true facts.

2. The court erroneously holds that the "hedge clause" contained in the offering circular to the effect that "all statements herein are official or are based on information which we regard as reliable, and while we do not guarantee them, we, ourselves, have relied upon them in the purchase of this security," relieves appel-

lant from liability for misrepresentations made by means other than the offering circular itself. The record affirmatively discloses that the statement of the so-called "hedge clause", that appellant had relied upon the facts stated in the purchase of the security, was essentially false and misleading, and instead of constituting a defense available to appellant, the "hedge clause" is but an additional evidence of appellant's fraud.

3. The court has overlooked, misconstrued or disregarded the record evidence which disclosed that the fraud and misrepresentations, as to the financial condition of Long-Bell relied upon by appellee and submitted to the jury by the trial court were based, not upon mere silence of Halsey, Stuart & Co., but upon the fact that it had made affirmative statements and representations concerning the Long-Bell Lumber Company, guarantor of the bonds, which were essentially misleading, and by indulging in half-truths and by suppressing the true facts, created a false and fraudulent impression as to the financial condition of Long-Bell.

4. The opinion of this court erroneously applies the rule of caveat emptor to the transaction involving the purchase by appellee of Longview improvement bonds. The court has overlooked the well established rule that the doctrine of caveat emptor is not strictly applied to representations involving property located at a distance, or to cases involving the credit standing of a third person. The court has also overlooked the fact that there was a duty imposed upon Halsey, Stuart arising out of the furnishing of the January 1, 1930 financial statement to advise appellee of the true facts when Halsey, Stuart & Co. became aware that that statement no longer correctly reflected the financial situation of Long-Bell.

5. The court, in holding that the Wood letter, Exhibit B-24, stating "We believe you have before you practically all the data covering this issue of bonds * * *," and that "You observe, of course, that the city has no funded debt other than these improvement bonds," was of trivial materiality, has substituted its own judgment for that of the jury upon the weight of the evidence.

6. The court has overlooked or ignored the Iowa law, (which governs the rights of the parties) that the mere fact that appellee could have learned of operating

losses suffered by Long-Bell in the early months of 1930 by reference to financial reports, constitutes no defense. Failure of one defrauded to exercise reasonable diligence to discover the fraud practised upon him is no defense to charges of fraud.

Endorsed: Filed May 15, 1940. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the twenty-fourth day of May, 1940, there was filed in the office of the Clerk of this Court, an answer to petition for rehearing, which said answer to petition for rehearing is in the words and figures following, to-wit:

IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

No. 7032

EQUITABLE LIFE INSURANCE COMPANY OF IOWA, *Plaintiff-Appellee,* vs. HALSEY, STUART & CO., a corporation, *Defendant-Appellant.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division. Honorable Michael L. Igoe, Judge Presiding.

ANSWER OF HALSEY, STUART & CO., DEFENDANT-APPELLANT, TO THE PETITION FOR REHEARING OF EQUITABLE LIFE INSURANCE COMPANY OF IOWA, PLAINTIFF-APPELLEE.

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Attorneys for Defendant-Appellant.

U. S. C. C. A.-7
FILED
MAY 24 1940
KENNETH J. CARRICK
CLERK

THE BUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

No. 7032

EQUITABLE LIFE INSURANCE COMPANY OF IOWA, *Plaintiff-Appellee,* *vs.* HALSEY, STUART & CO., a corporation, *Defendant-Appellant.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division. Honorable Michael L. Igoe, Judge Presiding.

ANSWER OF HALSEY, STUART & CO., DEFENDANT-APPELLANT, TO THE PETITION FOR REHEARING OF EQUITABLE LIFE INSURANCE COMPANY OF IOWA, PLAINTIFF-APPELLEE.

The document entitled "Appellee's Petition for Rehearing" is not a petition for rehearing, as we understand the purpose and scope of such a pleading. It is merely a reargument of certain of the points of plaintiff's answering brief heretofore filed in and considered by this court, with the citation of a few additional *cumulative* authorities. Point I of plaintiff's petition is found in its answering brief at pp. 85-87 and 91-92 in almost the identical language of the petition; Point II is argued fully at pp. 92-95 of plaintiff's brief; Point III of the petition is

Point II of plaintiff's brief (pp. 96-103), where the same argument is made and some of the same authorities are cited; Point IV of the petition is fully argued at pp. 73-76 of plaintiff's brief; and Point V is discussed and all the authorities there cited are considered at great length in plaintiff's brief at pp. 148-152.

Furthermore, each of these five points was treated at length in our opening and reply briefs. It seems both improper and unnecessary for plaintiff to subject this Court to further argument of the same questions and examination of the same authorities.

We will endeavor to avoid, therefore, so far as possible, a reargument of the case.

I.

Plaintiff does not question the clear statement by this Court in its opinion (p. 10) of the essential elements required to sustain an action for deceit or the further statement that "without the concurrence of all of these elements there can be no actionable fraud. None can be presumed, but each must be strictly proved, and the burden is on plaintiff to establish the fraud by clear, convincing and satisfactory evidence." Yet counsel again argue that the jury should have been allowed to *infer* knowledge by Halsey, Stuart & Co. as to the inaccuracy of the statement regarding Longview contained in the offering circular. Such an inference, it is argued, *could* be drawn from the fact that Halsey, Stuart & Co. prior to 1925 sold several large timber bond issues for the Long-Bell Company; that officers of the defendant were in Longview prior to 1925 and *could* have found out about the exact location of the city limits; and that early figures as to the assessed value of the real estate in the City of

Longview *should* have warned Halsey, Stuart & Co. that the Long-Bell and Weyerhaeuser mills were not in the city proper.

The fallacy of these arguments is pointed out by this Court in its opinion. At most, the facts relied upon give rise to mere *inferences*. They fall far short of that clear, convincing and satisfactory evidence by which the essential element of *knowledge* must be established. Moreover, the *inference* of knowledge which the plaintiff seeks to impute to Halsey, Stuart & Co. is directly rebutted by the uncontradicted proof:

1. That Halsey, Stuart & Co. purchased the local improvement bonds solely in reliance upon the guaranty of The Long-Bell Lumber Company and made no attempt to ascertain or to describe in its offering circular the lands within the several districts, the improvements thereon or the values represented thereby (Tr. 80, 82, 411). There was no occasion, therefore, for Halsey, Stuart & Co. to determine, when it bought the bonds or when it sold them, the limits of the several districts or what properties were located therein.

2. That Halsey, Stuart & Co. in fact relied solely upon The Long-Bell Lumber Company to supply it with a description of Longview for the purposes of its bond circulars and the very description complained of was furnished to the defendant in writing by The Long-Bell Lumber Company and approved by its general counsel (Tr. 339, 356, 615, Deft.'s Exs. 33 & 33A). The representative of Halsey, Stuart & Co. who prepared the circular relied upon that information (Tr. 340). Neither he nor any person connected with the defendant, so far as the record discloses, had *knowledge* of any inaccuracy in Long-Bell's statement of the facts (Tr. 340).

Of course, Halsey, Stuart & Co. could have found out the location of the Long-Bell and Weyerhaeuser mills by directing an inquiry to The Long-Bell Lumber Company just as this Court suggests the plaintiff could have found

out the facts by a request directed to Mr. Kelley or any other representative of Halsey, Stuart & Co. But the truth is that Halsey, Stuart & Co. did not inquire and had no occasion to inquire until Hubbell himself raised the question in 1930. Immediately, Mr. Simond, Vice President of Halsey, Stuart & Co., wired to The Long-Bell Lumber Company, received an answer on October 17, 1930, and transmitted that answer to Hubbell the same day (Tr. 340, 342, 609).

Counsel predicate their argument as to the question of knowledge upon the false premise that the burden of proof in a deceit action is upon defendant to show lack of knowledge on his part, rather than upon plaintiff to show actual knowledge. Upon this premise it is then argued that the officers of Halsey, Stuart & Co. who were on the stand did not testify to such *lack* of knowledge. The proof is undisputed that neither Mr. Stuart, Mr. MacNeille nor Mr. Schrader ever had anything to do with the purchase or sale of the Longview improvement districts bonds (Tr. 101, 167, 218). But in any event it was not defendant's burden to prove a negative (lack of knowledge) but rather the burden rested upon plaintiff affirmatively to establish *actual* knowledge on the part of defendant and, as this Court properly finds, the plaintiff entirely failed to discharge that burden of proof.

A strange argument is made by plaintiff at page 12 of the petition with respect to the statement by this Court that the record does not indicate that defendant had any more knowledge than did the plaintiff that vacant, unimproved land still belonging to The Long-Bell Lumber Company amounted to from 60% to 75% of the total land in the City of Longview. Counsel say that this Court overlooked some very vital evidence, namely, certain real estate sales reports made by the Longview Company to

R. A. Long, two of which were found in Halsey, Stuart & Co.'s files.

The Court will recall that one of the alleged fraudulent concealments upon which plaintiff relied in its amended complaint was the failure of defendant to disclose The Long-Bell Lumber Company's substantial ownership of these unimproved lots (Tr. 11-13). When we argued in our opening brief (pp. 73-5), however, that the plaintiff had utterly failed to prove this charge, the plaintiff replied under Point III of its answering brief (pp. 103-10) with the caption "The only issue with respect to fraudulent concealment submitted to the jury was the financial condition of the Long-Bell."

It is indeed strange to find the plaintiff arguing in its petition that this Court did not consider all the facts bearing upon an alleged fraudulent concealment which the plaintiff took several pages of its answering brief to convince this Court *was never submitted to the jury and is not in issue in this case.*

Plaintiff's whole argument under its Point I is that evidence which raises a mere inference of an essential element in the alleged fraud should be sufficient to justify submission of that issue to a jury and thus allow such element of the fraud to be presumed and not strictly proved by clear, convincing and satisfactory evidence. This is not the law, and we respectfully submit that this Court reached the only proper conclusion when it found that such evidence did not entitle the plaintiff to go to a jury.

II.

The statement of facts on which plaintiff predicates its argument under Point II is wholly without support in the record. Plaintiff attempts to distort the testimony regarding Mr. Hubbell's request for additional information into a statement that he was unwilling to accept the offering circular (Plff.'s Ex. B-1) because of the "hedge clause" and therefore demanded additional information not subject to a "hedge clause." The record is clear. Mr. Hubbell first asked for a statement showing what bonds had been retired. After receiving that statement he asked for the annual report of The Long-Bell Lumber Company for the year ended December 31, 1929, and for information as to the Washington local improvement districts laws. These were promptly furnished him. He then asked "whether I [Mr. Kelley] had any information covering the City of Longview *in a general way*"* (Tr. 296-7).

It is perfectly manifest that Mr. Hubbell was not requesting additional information because he objected to the "hedge clause" in the circular, but wholly because the circular in itself did not give him all the information that he desired. That he had no objection to the "hedge clause" as such is made clear by Hubbell himself when he testified (Tr. 188):

> "I read all of Plaintiff's Exhibit B-1, and I note that the information contained therein was based upon information which Halsey, Stuart & Company itself had received and relied upon, as is stated, in the purchase of those bonds. I don't think I asked Mr. Kelley from what source that information had been obtained.
>
> I know that it was the practice, *and of necessity so*, of investment houses in securing information regarding the properties of a company upon which the securities were being issued to secure that information from the issuing company."

* All italics herein are ours unless otherwise noted.

Hubbell admittedly knew that the statements made by Halsey, Stuart & Co. regarding Longview were obtained from the issuing company. He knew from the face of the printed documents themselves, which were received from Halsey, Stuart & Co.'s buying file, that these documents were issued by Long-Bell or its subsidiaries. How absurd to argue that the statements contained in Long-Bell's printed advertisements and brochures impose a liability when the statements in the circular itself do not. Hubbell knew that both were statements of Long-Bell, and that Halsey, Stuart & Co. was merely passing them on to him as the statements of the issuer of the securities and not the statements of the investment banker.

Counsel are arguing a case which is not presented by this record. There were no "positive representations made by means wholly independent of the circular itself". The printed documents which Hubbell received were the identical documents upon which Halsey, Stuart & Co. relied in the purchase of the securities and contained on their face notice of their source and character.

Nor do counsel in any respect distinguish the case of *Readinger* v. *Rorick*, 92 Fed. (2d) 140. We have answered the precise argument made by plaintiff as to that case in our reply brief (pp. 19-20). We will not repeat the answer here. That Halsey, Stuart & Co. believed the facts as stated in the circular to be true stands uncontradicted on this record. It exercised most scrupulous care to see that the statement was correct and caused every circular to be checked by Long-Bell officials and by the general counsel of that company.

III.

Counsel for plaintiff make the same fundamental error in their argument as to the so-called doctrine of half-truths that permeated their original brief.

They assume that Halsey, Stuart & Co. made some affirmative statement to the plaintiff regarding the financial condition of The Long-Bell Lumber Company which was a half-truth—a misleading or deceptive statement—and that therefore the duty rested upon the defendant to disclose all information coming into its possession affecting Long-Bell's financial condition. The premise is wholly false. Halsey, Stuart & Co. furnished to Hubbell exactly what he requested (Tr. 297, 315-16), which was "an annual report covering The Long-Bell Lumber Company's operations for the year ended 1929". That report was admittedly accurate and complete. Hubbell asked for no other or further financial data. Where is the half-truth which gave rise to a duty on the part of defendant to make further disclosures as to changes in Long-Bell's financial condition, and what affirmative act did Halsey, Stuart & Co. do to conceal from the plaintiff any such information? These questions admit of but one answer, and are a complete refutation of the argument under Point III.

All the authorities relied upon by the plaintiff are cases in which there was a *direct affirmative misrepresentation* with respect to some material matter, as a result of which misrepresentation the court found that the defendant was obligated to disclose all of the facts relating to that subject. We will not review those authorities, since they were fully discussed in our reply brief, but will refer only to the additional cases cited by the plaintiff in its petition.

Plaintiff cites at page 19 of its petition the case of *Cable*

v. *United States Insurance Co.*, 111 Fed. 19, but refrains from mentioning the rather pertinent fact that the case was reversed, albeit on other grounds, in 191 U. S. 288. However that fact may weaken the effect of the dictum cited, the case itself is completely distinguishable from the instant case. That action was an equity proceeding for the cancellation and recision of a life insurance policy. The rules governing an action for recision based on fraud are not the same as those applicable to an action at law. Furthermore, the facts of the *Cable* case do not bear any resemblance whatsoever to those of the instant case. Cable applied for some life insurance, which by its terms was not to be effective until delivered. At the time he applied for the life insurance, Cable warranted that he was in good health as of the effective date of the policy. The policy was delivered to one Lord, an intimate of Cable's, at a time when "Cable was seriously ill with acute pneumonia", of which he died three days later. In response to a direct inquiry made on the day of the delivery of the policy as to whether or not Cable was "all right", Lord answered, "No, Mr. Cable has been sick for two or three days, but he is no worse than he has been for the last forty-eight hours". The court said (p. 31) that Lord *knew* Cable was uninsurable and that, therefore, his answer "was a casual statement, partial and misleading, and the manner of its delivery was, in our opinion, such as to *ward off* rather than to *invite inquiry*, and *to convey* to McCabe (the agent of the insurer) *the impression* that Cable was, if at all, but *slightly indisposed*". The court emphasizes (p. 32) the fact that the statement was so grossly "deceptive and misleading" as to amount not to a mere failure to disclose but to an actual affirmative false statement. The fact that the *Cable* case is coupled by plaintiff with *Noble* v. *Renner*, 177 Ia. 509, 159 N. W. 214 (distinguished by this Court at page 13 of its opinion, and

by defendant at pages 24-5 of its reply brief upon exactly these grounds) is final proof that the *Cable* case has no application to the case at bar.

The case of *Laidlaw* v. *Organ*, 2 Wheaton 178, 4 Law Ed. 214 (discussed at p. 21 of plaintiff's petition), is clearly distinguishable on the facts. The essence of the fraud relied upon in that case depended upon knowledge as to whether or not the Treaty of Ghent had been signed, which would have affected the value of the tobacco. The vendor specifically asked the vendee "if there was any news which was calculated to enhance the price or value of the article about to be purchased". The vendee did not reply, although he had received such news. The opinion of the court is set out *in full* in the petition at p. 22, and the implication is apparent that, although the vendee was under no duty to *communicat* his information gratuitously, the fact that he kept silent when asked a *specific question* made a different rule applicable. The law condemns any conduct which may result in an imposition upon the other party. It is, of course, obvious that keeping silent, when to do so signifies a negative answer to the question presented, is an "imposition". Certainly no such silence is present in the instant case, for Mr. Hubbell testified *that he received all of the information he asked for at all times* (Tr. 192, Appellant's Reply Brief, p. 12).

The next case relied upon by plaintiff is *Stewart* v. *Wyoming Cattle Ranche Co.*, 128 U. S. 383, 32 L. Ed. 439, discussed at pages 22-3 of the petition. The facts of this case, even as set out in the petition, show that it has no relation to the instant case. It is similar to *Laidlaw* v. *Organ*, 2 Wheaton 178, 4 L. Ed. 214, discussed *supra*, in that there was involved a series of *affirmative* fraudulent acts designed to deceive. In other words, there was an active attempt to mislead the plaintiff by requesting him

not to make inquiries concerning the truth of the defendant's statements. Here again there is presented a case of a party fraudulently and improperly *preventing* the plaintiff from procuring the information requested. The language cited at p. 23 of the petition is exactly in accordance with the opinion of this Court, *i. e.*, that there must be a duty to speak, or an *intentional* and conscious misleading of the plaintiff. The evidence clearly disclosed a series of false representations by the defendant and a deliberate design to mislead the plaintiff by throwing "unreasonable obstacles in his way to prevent his procuring the information that he sought and that he desired" (p. 336). It is apparent that the instant case is not even remotely comparable on the facts to the *Stewart* case.

The case of *Iasigi* v. *Brown*, 17 How. 183, 15 L. Ed. 208, discussed at pp. 25-26 of plaintiff's petition, involves the same point as is made in the quotation from 23 Am. Juris. § 89, p. 869, which is set forth at p. 24 of the petition. As is true of the other cumulative authorities relied upon by plaintiff, the *Iasigi* case is clearly distinguishable on the facts from the case at bar. That case involved the most flagrant kind of affirmative misrepresentation. The plaintiff requested information respecting the credit of one Thompson and his firm. In response, the defendant wrote two letters, one setting forth detailed reasons intended to lead plaintiff to believe defendant had confidence in the credit of Thompson and his firm, and the other, of later date, affirming the "favorable opinion of the concern" alluded to. As a matter of fact, and as was stated by the defendant, "at the time the letter was written they had lost their confidence". Furthermore, the defendant knew the statements in the letters were false for, in fact, a transfer of all of Thompson's property had been made to the defendant before the first letter was written. Such

a case has no possible relation to the case before this Court, where no fraudulent or misleading statements were made.

The plaintiff has continued to confuse the issues of false representation, failure to disclose, and fraudulent concealment, a confusion evidenced in plaintiff's answering brief. Admittedly, falsely representing the credit of another would make a case for the jury; failing to disclose that which one has no duty to disclose does not, and it is error to permit the jury to speculate upon it, as this Court has decided.

In attempting to establish a duty on the part of defendant to disclose, and a breach of that duty, plaintiff cites the case of *Loewer* v. *Harris*, 57 Fed. 368. The language cited at pp. 27-8 of the petition indicates that the law involved is not applicable here. Certainly there can be no claim that Halsey Stuart put Equitable "off its guard" by presenting exactly the financial information requested, and when all the intermediate changes in that financial position were published throughout the country in a form which came to the attention of the plaintiff. The financial report involved in the *Loewer* case was dated August 31, 1890, and was given to the plaintiff by the defendant at a meeting in January, 1891. At this meeting

> "* * * the plaintiff asked the defendant if the brewery was still doing as well, telling him that the capitalization of the corporation would be based on the earning capacity of the business, and, if the profits were not as good as they had been, he would not want anything to do with it. The defendant said the figures of the prospectus and report were correct, and that the business was showing a gradual increase the same as it had done previously."

After the contract between the plaintiff and the defendant was signed in April, 1891, plaintiff learned that actually, from August 31, 1890, the business had not gradually

increased, "but, on the contrary, had materially diminished". Thus there was present not merely the production of the financial report, but an affirmative false statement as to subsequent financial condition. The representation was not that the report was true as of August 31, 1890, but that the brewery had enjoyed a gradual increase in profit down to January, 1891, which representation the defendant knew to be false before the plaintiff acted upon it. This element of fraudulent representation, completely lacking in the instant case, is the basis for the decision in the *Loewer* case. As the court says, at p. 373, immediately following the portion cited by the petitioner:

> "The representation made by the defendant respecting the output and profits of the business, if made at all, was made in response to an inquiry of the plaintiff, coupled with the statement that he would not want to have anything to do with the transaction if the profits were not as good as they had been, and that the capitalization of the corporation would be based on the earning capacity of the business. The defendant understood that the inquiry and answer were addressed to the condition of things which might be relied upon by the plaintiff as the basis of the contract which was thereafter to be formally concluded."

This case is also of the same breed as *Noble* v. *Renner*, 177 Ia. 509, 159 N. W. 214, relied upon by plaintiff in its answering brief, discussed and distinguished by defendant in its reply brief and by this Court in its opinion.

Plaintiff fails completely to establish that Halsey Stuart indulged in misleading statements, half-truths, or statements calculated to dissuade it from conducting a further investigation of the financial condition. The first fact relied upon by plaintiff as a basis for this point, Wood's letter of May 14, 1930, is in direct conflict with the assertion of the existence of such deceit. The full sentence in Wood's letter, a portion of which is quoted in the petition at p. 30 reads:

> "We *believe* you have before you *practically* all the data covering this issue of bonds, but *if you have any questions in mind,* we shall be pleased indeed to have you call Mr. Kelley or this office *for anything you may need.*" (Pl. Ex. B-24, Tr. 466.)

Obviously, the statement is an invitation to further inquiry, and definitely not an affirmation of full disclosure. A comparison of this letter with the facts of the cases relied upon by plaintiff is evidence of the lengths to which it is forced to travel in attempting to impose a liability which in all justice should be denied. For a full discussion of Wood's letter, the Court is respectfully referred to pp. 48-59 of our opening brief.

The next fact, that of the supplying of the January 1, 1930, balance sheet, has been argued fully to this Court (Deft's Brief, pp. 76-78; Plff's Answering Brief, pp. 106-109; Deft's Reply Brief, pp. 22-29). The financial information furnished was exactly that requested (Tr. 296-7) and the creation of the Sales Corporation in fact greatly strengthened the position of the Lumber Company (Tr. 350, 352, 372). No duty upon defendant can be spelled out from the authorities cited nor can there be found any affirmative acts designed to prevent the plaintiff from making adequate investigation.

The third point sought to be made by plaintiff is predicated upon Wood's letter of June 4, 1930 (Plff's Ex. B-40, Tr. 483). The statements in this letter were absolutely true and were so far from a fraudulent representation as to make the mere assertion ridiculous. Plaintiff would have this Court believe that the sale of the railroad was a desperate effort to convert unencumbered properties into cash, so as to keep the corporation afloat. There is absolutely no evidence in the record tending to sustain plaintiff's interpretation of the reason for the sale of the railroad, and plaintiff's assertion is created entirely out of

whole cloth. That this transaction was actually a benefit to the Lumber Company is apparent from the tone of Wood's letter and from the facts themselves (Tr. 353-4). Whatever the facts behind the letters, certainly no "persuasive evidence of misleading and deceptive statements" as to Halsey Stuart's opinion of Long-Bell's financial position can be found therein. As this Court points out at pp. 13 and 14 of its opinion, the defendant indulged in no deception and no misleading.

IV.

The duty of a court to pass upon the materiality of evidence is clear and well established. The jury is to be permitted to consider only that evidence which is material. In the case of alleged misrepresentation only that evidence upon which plaintiff had a right to rely is material. That the letter written by Wood on May 14, 1930, was not material, because its contents could not be tortured into the meaning plaintiff attempts to give it, is completely established in our opening brief at pages 48-59, and has never been answered by plaintiff. This Court's attention is respectfully called to those pages.

V.

Plaintiff's contention that the negligence of the plaintiff is no defense to a charge of fraud based on false and misleading representations raises a false issue. No such contention was made by the defendant and this Court does not purport to announce such a principle.

In the excerpt from the opinion (p. 13), quoted by the petitioner (p. 36), this Court is discussing the lack of evidence to establish either affirmative misrepresentation or concealment by the defendant as to the financial condition of Long-Bell. In this connection, the Court notes,

as bearing upon the issue of concealment, that the facts as to Long-Bell's current financial condition were available to the world and were disclosed by the financial news reports in plaintiff's own offices. This observation is pertinent in considering whether the record discloses any affirmative acts on the part of defendant to prevent the plaintiff from making an adequate investigation of facts regarding Long-Bell's financial condition. This Court does not even intimate, still less decide, that if the evidence had disclosed either affirmative misrepresentations or affirmative concealments by the defendant as to the condition of the Long-Bell Company, the availability of financial information to the plaintiff would have excused the defendant's fraud.

The complete answer to plaintiff's argument is that the Court finds in this case (1) no misrepresentation as to Long-Bell's financial condition, and (2) no affirmative concealment of information as to the current status of the company. Lacking one or the other of these essential requirements, the plaintiff's case falls.

As pointed out in the cases to which plaintiff refers (pp. 37-38), where misepresentations are clearly established, the defendant cannot plead that his victim was easily deceived. In each of those cases, however, the misrepresentations were definitely shown. These authorities are analyzed at pp. 56-59 of our reply brief.

The statements at page 38 of the petition regarding Halsey, Stuart & Co.'s knowledge of the formation of The Long-Bell Lumber Sales Corporation go far beyond the facts as they appear in this record, but the same principle is applicable to these facts as to information regarding the current earnings of Long-Bell. The plaintiff was furnished with exactly the information requested. No effort was made to conceal from the plaintiff any fact

regarding Long-Bell or its affairs, and therefore no basis for the charge of fraudulent concealment was established in this case.

Conclusion.

The opinion of this Court evidences a most careful and exhaustive examination of the record in this case. The petition for rehearing calls attention to no question of fact or principle of law which was not fully argued in the voluminous briefs heretofore filed. Every point urged in the petition has already been considered and decided by this Court. The generous use by plaintiff of opprobrious epithets and the reiteration of wholly unfounded charges will not, we know, disturb the judgment of this Court. To allow the judgment below to stand would do violence to fundamental and well settled principles of law and to the plainest concepts of right and justice.

We respectfully pray that the petition for rehearing be denied.

Respectfully submitted,

Edward R. Johnston,
Samuel W. Block,
Attorneys for Defendant-Appellant.

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And afterwards, to-wit: On the nineteenth day of June, 1940, the following further proceedings were had and entered of record, to-wit:

Wednesday, June 19, 1940.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.

Equitable Life Insurance Company of Iowa, *Plaintiff-appellee,* vs. Halsey-Stuart & Company *Defendant-appellant.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

7032

It is ordered by the Court that the petition for a rehearing of this cause be, and it is hereby, denied.

And afterwards, to-wit: On the first day of July, 1940, there was filed in the office of the Clerk of this Court, an application for order recalling mandate and for order staying the issuance of mandate, which said application is in the words and figures following- to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Equitable Life Insurance Company of Iowa,
Plaintiff-Appellee,
vs.
Halsey, Stuart & Co., a Corporation,
Defendant-Appellant.
} No. 7032.

APPLICATION FOR ORDER RECALLING MANDATE AND FOR ORDER STAYING THE ISSUANCE OF MANDATE.

Equitable Life Insurance Company of Iowa, plaintiff-appellee herein, states and shows the court as follows:

That this is an action for the recovery of damages based on fraud and deceit in connection with the sale of a large block of Local Improvement District Bonds of the City of Longview, Washington.

That in the trial court judgment was entered in favor of plaintiff-appellee upon the verdict of a jury in the sum of $66,150.00.

On April 27, 1940 this court entered its opinion and order reversing the judgment of the court below, and that the sole ground for reversal discussed in the opinion is the insufficiency of the evidence to support the verdict. That appellee duly filed petition for rehearing which was considered and determined by the court and overruled on the 19th day of June, 1940. That upon the denial of appellee's petition for rehearing, the clerk of this court as a matter of course issued to the clerk of the District Court for the Northern District of Illinois, Eastern Division, a mandate or writ of procedendo directing the said district court to proceed further in said cause in accordance with the opinion and order of this court.

That the judgment and order of this court is reviewable by the Supreme Court of the United States upon certiorari, and the time within which appellee may petition the Supreme Court of the United States for a writ of certiorari has not yet expired and will not expire until three months

after the date that appellee's petition for rehearing was denied. That appellee will within the time prescribed by the statutes and the rules of the Supreme Court of the United States duly docket this cause in the office of the Clerk of the Supreme Court of the United States and will file its petition for writ of certiorari as required by the statutes and rules of said court.

That appellant has filed in the office of the Clerk of the district court below a motion to discharge the supersedeas bond filed by appellant upon the taking of the appeal, and that said proceeding should not be heard or determined before the disposition of this cause by the Supreme Court of the United States. That appellant contends that this cause is one not reviewable by certiorari and sets up such fact as one of the grounds of its motion to exonerate appellant's supersedeas bond. That unless the mandate of this court be recalled, appellant may attempt to cause said case to be brought on for trial or some other order entered therein in the District Court prior to the disposition of the appellee's petition for certiorari in the Supreme Court of the United States.

Wherefore, plaintiff-appellee prays that an order be entered herein recalling the mandate heretofore issued by the Clerk of this court to the District Court of the United States for the Northern District of Illinois, and the issuance of the mandate be stayed pending the determination by the Supreme Court of the United States upon appellee's petition for writ of certiorari to that court, and that if said writ be granted by the Supreme Court of the United States then that the issuance of the mandate be stayed until the final determination of said cause.

Appellee further prays that if notice of any hearing upon this application be necessary, that the court fix the time and place for hearing and by order direct the notice to be given appellant or its counsel, and for such order in the premises as may be just and proper.

A. B. Howland,
Norman H. Pritchard,
Irving Herriott,
Attorneys for Equitable Life Insurance Company of Iowa.

State of Illinois, } ss.
County of Cook. }

A. B. Howland, being first duly sworn on oath states that he is a resident of Des Moines, Polk County, Iowa; that he is one of the attorneys for the Equitable Life Insurance Company of Iowa; that he is familiar with the facts and circumstances set forth in the above and foregoing application; that appellee, Equitable Life Insurance Company of Iowa, has directed him to proceed with the preparation and filing of a petition for writ of certiorari to review the judgment and order of the Circuit Court of Appeals in the above and foregoing cause; that he is familiar with the facts set forth in the above and foregoing application, and that all facts therein stated are true, as he verily believes.

A. B. Howland.

Subscribed and sworn to before me by A. B. Howland this 1st day of July, 1940.

Mildred C. Erickson,
(Notarial Seal) *Notary Public, Cook County, Illinois.*

Endorsed: Filed July 1, 1940. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the third day of July, 1940, there was filed in the office of the Clerk of this Court, suggestions in opposition to application for order recalling and staying mandate, which said suggestions are in the words and figures following, to-wit:

State of Illinois, } ss.
County of Cook. }

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Equitable Life Insurance Company of Iowa,
Plaintiff-Appellee,
vs.
Halsey, Stuart & Co., a corporation,
Defendant-Appellant.
} No. 7032.

SUGGESTIONS IN OPPOSITION TO APPLICATION FOR ORDER RECALLING AND STAYING MANDATE.

Halsey, Stuart & Co., defendant-appellant, by its attorneys, Edward R. Johnston and Samuel W. Block, in opposition to an application for an order recalling and staying the mandate of this Court heretofore entered herein, represents:

1. That those matters set forth on the first page of appellee's application concerning the reversal of a judgment entered in favor of appellee and the denial of a petition for rehearing, being matters of record, are true.

2. That if the judgment and order of this Court is reviewable by the Supreme Court of the United States upon the issuance of a writ of certiorari, and if the appellee intends to file a petition for such a writ within the time provided, no basis for the recall nor stay of the mandate already issued exists because of any possible prejudice to such petition. The issuance of mandate by a Circuit Court

of Appeals does not affect a petition for, nor defeat the issuance of, a writ of certiorari by the Supreme Court.

The Conqueror, 166 U. S. 110, 113;
Louisville and Nashville R. R. Co. v. *Behlmer*, 169 U. S. 644, 648;
Carr v. *Zaja*, 283 U. S. 52, 53.

Thus the application for an order recalling and staying the mandate already issued by this Court and filed in the United States District Court for the Northern District of Illinois, Eastern Division, cannot rest upon any prejudice to appellee's right to petition for a writ of certiorari.

3. That a stay of mandate is a process by which an unsuccessful litigant protects his property against the levy of execution while perfecting an appeal to a higher tribunal. No threat of execution is here presented, for the appellant has assured, and does hereby before this Court assure, the appellee that no execution will be levied upon the property of the appellee for the costs of the appeal allowed it until such time as the petition for a writ of certiorari is finally determined. Since no other possibility for levy of execution against the appellee exists, no reason for an order recalling and staying the mandate exists because of any possible threat to appellee's property.

4. That the contention of appellee, "that unless the mandate of this Court be recalled, appellant may attempt to cause said case to be brought on for trial or some other order entered therein in the District Court prior to the disposition of the appellee's petition for certiorari in the Supreme Court of the United States", is without any foundation whatsoever. Certainly the appellant would not be seeking to bring this case on for trial, and the appellant assures this Court that no such orders will be prayed. The motion to discharge the supersedeas bond already made is the only one appellant contemplates making before the District Court at the present time.

5. That by virtue of the rules of this Court the mandate issued to the District Court in due course, and that in reliance upon the issuance of said mandate the appellant has taken certain steps, including the filing of said motion, to discharge the supersedeas bond, since the condition of said bond was satisfied. The recall of mandate at this time would seriously prejudice appellant without any corresponding benefit to appellee, who, as already shown, is fully protected without any recall or stay of mandate.

Wherefore, appellant respectfully submits that the application of appellee for an order recalling and staying the mandate already issued by this Court be denied, for the reason that no benefit will accrue to appellee, and said recall will prejudice actions taken by appellant in reliance upon the issuance of said mandate, that no reason exists for the recall or stay of said mandate, and that the appellee go hence without day.

Respectfully submitted,

Edward R. Johnston,
Samuel W. Block,
Attorneys for Halsey, Stuart & Co.

State of Illinois, } ss.
County of Cook. }

Samuel W. Block, being first duly sworn, on oath deposes and says that he is one of the attorneys for Halsey, Stuart & Co., that he is familiar with the facts and circumstances set forth hereinabove, and that all such facts are, to his best knowledge and belief, true.

Samuel W. Block.

Subscribed and sworn to before me this 3rd day of July, A. D. 1940.

Natalie R. Gould,
Notary Public.

(Notarial Seal)

Endorsed: Filed July 3, 1940. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the eighth day of July, 1940, the following further proceedings were had and entered of record, to-wit:

Monday, July 8, 1940.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.

Equitable Life Insurance Company of Iowa, *Plaintiff-appellee,* vs. Halsey-Stuart & Company, *Defendant-appellant.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

7032

On application of counsel for appellee, it is ordered that the mandate of this Court in this cause be, and it is hereby, recalled and stayed pursuant to Rule 25 of the rules of this Court.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 651 to 706, inclusive, contain a true copy of the proceedings had and papers filed (excepting motions, stipulations and orders relative to time for filing and size of briefs, and briefs of counsel) in the following entitled cause:

Cause No. 7032.

Equitable Life Insurance Company of Iowa,
Plaintiff-appellee,

vs.

Halsey, Stuart & Company,
Defendant-appellant,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 26th day of July, A. D. 1940.

Kenneth C. Carrick,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

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SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 14, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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FILE COPY

Office - Supreme Court, U. S.
FILED
JUL 31
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1940.

NO. 291

EQUITABLE LIFE INSURANCE COMPANY OF IOWA,
Petitioner,

vs.

HALSEY, STUART & CO., A Corporation, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

JOSEPH G. GAMBLE,
ALDEN B. HOWLAND,
500 Bankers Trust Building,
Des Moines, Iowa,
Attorneys for Petitioner.

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SUMMARY OF ARGUMENT.

I.

The so-called "hedge clause" of the offering circular in which respondent represented that "all statements herein are official, or are based on information which we regard as reliable, and while we do not guarantee them, we, ourselves, have relied upon them in the purchase of this security," cannot be construed to relieve respondent from liability for misrepresentations recklessly made through means other than the offering circular itself 20, 23

A.

Since respondent did not purchase the local improvement bonds in reliance upon the security of the real estate assessments, as the circular indicated, the statement in the hedge clause that it did so, was essentially misleading, and was itself a fraudulent representation 20, 26

II.

The record shows that respondent was not merely silent with respect to the financial condition of Long-Bell, guarantor of the bonds, but indulged in half-truths, made affirmative statements and representations misleading in character, and by suppressing the true facts created a false and fraudulent impression as to the financial stability of Long-Bell. The conclusion of the Circuit Court of Appeals that respondent was under no duty to disclose the true facts ignores established rules of law 20, 27

A.

Where positive representations are made which are true when made, but while the transaction is pending conditions substantially change, to the knowledge of the party making the original representations, good faith and common honesty require that the party making the representations advise the other that the change has taken place, and failure to disclose the fact of such change constitutes actionable fraud 21, 31

II.

III.

The conclusion of the court that the Wood letter of May 14, 1930, which stated "We believe you have before you practically all the data covering this issue of bonds," and "You observe, of course, that this city has no funded debt other than these improvement bonds," was of trivial materiality, substitutes the judgment of the court for that of the jury upon the weight of the evidence 21, 33

IV.

The rule of caveat emptor may not be applied to business transactions concerning the credit and financial standing of third persons. Even where one is under no obligation to supply information as to the credit standing of a third person, if he voluntarily undertakes to do so, and leads the inquirer to believe that the credit of such third person is essentially different from the facts within his knowledge, and fails to disclose information vitally affecting the credit of such third person, he is liable for fraud to one extending credit to the third party upon the faith of such representations 21, 35

V.

That appellee might have learned the true facts with respect to the location of the Long-Bell and Weyerhaeuser mills by independent investigation, or could have learned of Long-Bell's earnings from other sources, is no defense to a charge of fraud. The Iowa law (which governs this case) is that negligence of a defrauded vendee cannot be pleaded as a defense by a guilty vendor 22, 36

AUTHORITIES CITED.

23 American Jurisprudence, Fraud and Deceit, Pars. 93 and 94 .. 16, 21, 28
23 American Jurisprudence, Fraud and Deceit, Par. 89 22
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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1940.

NO._____

EQUITABLE LIFE INSURANCE COMPANY OF IOWA,
Petitioner,

vs.

HALSEY, STUART & CO., A Corporation, *Respondent.*

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Petitioner, Equitable Life Insurance Company of Iowa, respectfully shows to this Honorable Court:

SUMMARY STATEMENT OF THE MATTER INVOLVED.

Petitioner, a life insurance company organized under Iowa laws, brought this action in the Northern Illinois District against respondent, Halsey, Stuart & Co., an Illinois corporation dealing in bonds and securities, for damages of $250,157 because of fraud practiced upon petitioner in the sale of bonds of local improvement districts of the City of Longview, Washington.

The evidence upon the trial disclosed that respondent, known to petitioner, and its officers, as one of the nation's leading bond and investment houses, about May 1, 1930,

offered to petitioner, as an investment for its policy reserves, a block of Longview, Washington local improvement bonds. Respondent's salesman Kelley first delivered to F. W. Hubbell, petitioner's Vice President and treasurer, an offering circular describing the bonds, Exhibit 1. (R. 171, 410-413, inc.) This circular described the bonds as payable from the proceeds of special assessments levied upon benefited property. It contained the following statement:

> "Longview is situated about 133 miles south of Seattle at the confluence of the Columbia and Cowlitz Rivers. It has a frontage of 7¼ miles on the former, and is a port of call for ocean-going vessels midway between Portland and the Pacific Ocean. * * * Because of its natural advantages and proximity to the timber stands of the Long-Bell and Weyerhaeuser interests, Longview was selected as the site for the vast lumber manufacturing plants of these companies. The present output of the Long-Bell plants is 1,800,000 board feet per day. The Weyerhaeuser plants are under construction. Manufacturing plants have also been erected by other concerns, including the Longview Concrete Pipe Company, the Pacific Straw Paper & Board Company, the Magor Car Corporation, the Standard Oil Company, Longview Paint & Varnish Company, and the Central Mill Works. The first unit of the plants of the Longview Fibre Company, to cost two and one-half million dollars, is now well under way."

The circular contained the following notation in fine print:

> "All statements herein are official, or are based on information which we regard as reliable, and while we do not guarantee them, we ourselves have relied upon them in the purchase of this security." (R. 413)

Kelley stated that the bonds, in addition to being municipal securities, were unconditionally guaranteed by Long-Bell Lumber Company, a very large and long-established lumber manufacturing company. (R. 170) After examin-

ing the circular, Hubbell asked Kelley for more information concerning the City of Longview, what the property was out there, and about the Long-Bell Lumber Company. (R. 187, 188) In response to such request, Kelley secured from respondent's Chicago office and delivered to Hubbell Exhibit B-23 and Exhibits B-25 to B-34, inc. Exhibit B-23 was a tabulation showing the amounts of bonds originally issued in the various improvement districts, the number of bonds previously redeemed, and the number outstanding. (R. 171 and R. 465)

Exhibit B-25 was a rotogravure booklet of magazine size, issued by the Longview Co., a Long-Bell subsidiary and profusely illustrated with photographs of Longview. On the back of this Exhibit was a map which showed the location of The Long-Bell Lumber Company mills, the properties of the Weyerhaeuser Timber Company, and the City of Longview extending along the northerly side of the Columbia River. The corporate limits of the city were not shown. The map bore a legend reciting, that it

> "is intended to show in a general way the relation of the various parts of the city site to each other, and location of the city in relation to water, railroad and highway transportation facilities."

Exhibit B-27 was a reprint of an advertisement published in the Saturday Evening Post, with an illustration of extensive manufacturing plants, beneath which appeared:

> "The thoroughly modern, electrically operated manufacturing plants shown in the above sketch are in Longview, Wn. They produce 1,800,000 feet of Douglas fir lumber a day. The buildings cover 72 acres."

Exhibit B-28 is a descriptive booklet issued by the Longview, Wash. Chamber of Commerce, profusely illustrated. The booklet stated:

"Because Longview has proven by thorough investigation to offer those essentials necessary for successful industry, great manufacturing enterprises have made, and are making investments in this new industrial city. Appreciation of the many facilities of the site first led the Long-Bell Lumber Company to select it for the greatest lumber manufacturing plants in the world. The Weyerhaeuser Timber Company, largest lumber concern in the United States, has within the past two years built and put into operation a plant of three great mills on a 700 acre site on the Longview water front.",

From the offering circular and other exhibits Hubbell understood that the industrial plants referred to were inside the corporate limits, and subject to assessment in those improvement districts which embraced substantially the whole city. (R. 172) Kelley informed Hubbell that the limits of Local Improvement Districts #19 and #11 were co-extensive with the limits of the city. (R. 174)

The Long-Bell and Weyerhaeuser mill properties each represented an investment of about $10,000,000 and the Longview Fibre Company about $2,500,000 in 1930. (R. 213) The Long-Bell, Weyerhaeuser, Longview Fibre and Standard Oil Company plants were all outside the limits of Longview, and were not subject to assessment in any of the improvement districts. (R. 212) The mill properties were between the Columbia River and the limits of the city. The city never had a frontage of 7¼ miles upon the Columbia River, and in fact no frontage at all except for a very short distance adjacent to the Port of Longview dock. (R. 212)

On May 14, 1930 Frank Wood, respondent's Chicago sales manager, wrote Hubbell a letter, Exhibit B-24 (reproduced R. 466) in which respondent offered petitioner $100,000 par value of the Longview bonds in exchange for a like amount of State of Louisiana Highway bonds, maturing in March 1931, $85,000 of the bonds to be immediately delivered, and $15,000 for delayed delivery. This letter concluded:

"We believe you have before you practically all the data covering this issue of bonds, but if you have any questions in mind, we shall be pleased, indeed, to have you call Mr. Kelley or this office for anything you may need.

You observe, of course, that this city has no funded debt other than these improvement bonds, and that the original debt has been materially reduced through retirement and maturity."

Practically every lot and parcel of land included within the local improvement districts of Longview was also included within a diking district known as Cowlitz County Consolidated Diking District No. 1. (R. 264) In May, 1930, there were outstanding $2,554,000 of Diking District Bonds payable from the proceeds of special assessments levied upon lands within the district. (R. 264, 265)

Respondent well knew of the outstanding diking district bonds, for it had purchased from Long-Bell and resold the entire diking district bond issue in 1925. (R. 76, 77)

Kelley delivered to Hubbell a consolidated balance sheet of Long-Bell, and subsidiaries, as of December 31, 1929. (Exhibit B-34, R. 467-478, inc.) This balance sheet disclosed total assets of $116,183,706, of which current assets, comprising cash and inventories were $15,831,180. Current liabilities, including bank loans of $4,000,000, were $7,795,940. Funded debt of the corporation and all subsidiaries was shown as $41,794,042, and capital and surplus in excess of $59,000,000.

R. E. Simond, one of respondent's vice presidents, called as a witness by petitioner under Rule 43-b of the Rules of Civil Procedure, testified that in purchasing the local improvement bonds, respondent gave no consideration to the assessments against Longview real estate; that because of the unsatisfactory record of such bonds, respondent did not, and would not have considered them as predicated simply upon the real estate security; that respondent re-

garded the Long-Bell guarantee as the sole justification for handling the bonds. (R. 74-81) Respondent knew that the assessed valuations of lands within the various districts in 1925 and subsequent years were very low. (R. 80) It paid no attention to the valuations of lands in the districts because the bonds were purchased solely on the Long-Bell guarantee. (R. 80) These facts were never communicated to petitioner. (R. 315)

On June 4, 1930, Wood, respondent's Chicago sales manager, again wrote Hubbell that a proposed purchase of Long-Bell's subsidiary railroad by trunk lines in the Pacific Northwest indicated the importance of the City of Longview. (R. 483) This letter also stated:

> "Incidentally, I think you might be interested in knowing that within the past few days they have undertaken the retirement of a very substantial amount of Long-Bell Lumber Company mortgage bonds from funds which became available from the sale of capital assets not necessary to the successful operation of the company."

On May 17, 1930, petitioner, upon Hubbell's recommendation, purchased $85,000 of the local improvement bonds, exchanging a like amount of State of Louisana Highway bonds which had a market value slightly above par. On May 26, 1930 it exchanged $15,000 of Louisiana Highway bonds for a like amount of Longview local improvement bonds. On various dates in August, September and October, 1930, petitioner purchased $35,000 of such bonds for cash, at a price of 99 3/4, and on October 17, 1930, exchanged $200,000 of Chicago tax anticipation warrants, having a value slightly above par, for a like amount of Longview improvement bonds. In all, petitioner purchased $353,000 of Longview local improvement bonds from respondent. (Exhibit B-35, R. 479) Of these, $219,000 were bonds of District #11, and $60,000 were bonds of District

#19. These are the two districts which embrace the whole City of Longview. (R. 479)

All negotiations were conducted in Des Moines, Iowa, which is approximately 2,000 miles from Longview, Washington. Petitioner made no independent investigation of the bonds before purchasing them. (R. 172)

A close business relationship existed between Long-Bell Lumber Company and respondent in the years preceding 1930. Between 1922 and 1926 respondent purchased from Long-Bell and resold more than $25,000,000 of first mortgage bonds secured by liens upon standing timber, manufacturing plants and mill properties, including those located just outside the corporate limits of Longview. (R. 115) In 1925 respondent handled an issue of Cowlitz County Consolidated Diking District Bonds guaranteed by Long-Bell in the amount of $3,260,000. (R. 78) In 1926 respondent distributed $3,250,000 of Long-Bell collateral gold notes secured by pledge of bonds of a railroad subsidiary. (R. 116) In the offering circular of that issue respondent was referred to as the "fiscal agent" of Long-Bell. (R. 425) Respondent also bought from Long-Bell more than $3,000,000 of Longview local improvement district bonds issued in the years 1925, 1926 and 1927.

In November, 1927, respondent received advance notice that the directors of Long-Bell proposed to omit the quarterly dividend on the Class "A" stock of Long-Bell Lumber Corporation, a holding concern. (R. 155) In 1928 respondent conducted market operations in Long-Bell securities for which it asked $75,000 as compensation for bringing about an improvement in the market. (R. 88, 89, and see Exhibit B-5, reproduced at R. 431, 432) In January, 1930, respondent conferred with the Long-Bell officers with respect to a proposed merger of lumber manufacturers in the Pacific Northwest, (R. 91, 92) and see plaintiff's Exhibit B-6, (R. 433-435; in which the Long-Bell officers stated:

> "It is recognized that if the lumber industry of the Pacific Northwest is to be placed on a permanently stable and profitable basis, the desired economies effected and waste reduced, something more than the present individual and desultory attempts to regulate production, which regulation at best is only a temporary expedient to meet quickly an acute and distressing situation, must be accomplished."

In connection with its various purchases of Long-Bell securities, respondent sent three of its vice presidents, F. K. Shrader, C. T. MacNeille and Walter I. Sleep, to Longview. (R. 116 and 153) Sleep, in charge of municipal security purchases, was in Longview when the first local improvement issues were purchased. (R. 211, 212, and see Exhibit P-34, R. 513-515, inc.) Sleep died before the trial. Both Shrader and MacNeille testified, but neither of them denied knowledge that the Long-Bell and Weyerhaeuser mills were outside the corporate limits.

During the early months of 1930, respondent was informed that Long-Bell was endeavoring to sell its railroad subsidiary to certain trunk line railroads, to procure a large loan on another line of railroad at Weed, Cal., and to dispose of its power generating plant adjacent to Longview, which supplied power for lighting and domestic uses within the city, (R. 142) "to strengthen Long-Bell's current financial position by converting physical assets into working capital to meet current requirements." (R. 142)

In March and April, 1930, Long-Bell applied to respondent to market a bond issue for $150,000 on the Longview Daily News, a daily newspaper owned or controlled by Long-Bell, and to underwrite an issue of notes secured by pledges of instalment sales contracts for standing timber. (R. 92) On April 14, 1930, respondent's president, H. L. Stuart, advised R. A. Long, chairman of Long-Bell, that its credit was selling in the market on such a basis as to make it difficult, if not too costly, to undertake a sale of such

notes. (R. 93) On May 5, 1930, Stuart suggested to Long that he approach two New York banking houses for the desired financing, stating that these firms might be induced to make loans where the securities were not immediately marketable, but that they would probably demand a large commission or bonus. (R. 93, 94) On May 15, 1930, Long advised Stuart that he had been unable to secure the desired financing in New York. (R. 94, 95) In that letter Long stated to Stuart:

> "At the present, with business conditions as they are, we also need to strengthen our current position. If this could be done to an extent by accomplishing a disposition of the timber contracts, the importance of such a transaction is emphasized. Especially so, since we find the commercial bankers in a generally critical and sensitive attitude of mind. We, therefore, have the problem before us of meeting this situation, and doing everything possible to improve it so far as our position is concerned." (R. 95 and 436)

The matter of additional financing for Long-Bell was repeatedly brought up by the Long-Bell officers with respondent, until June, 1930. (R. 163, 164) On June 2, 1930, Shrader wrote Long that difficulties in the way of marketing any securities which "have anything to do with lumber, are so great as to make it almost impossible." (R. 165)

About May 5, 1930, the Long-Bell executives were advised by the Chase National Bank of New York that it would not continue Long-Bell's line of credit unless its current financial position could be strengthened. The Chase Bank suggested that a new subsidiary corporation be created to own all liquid assets and conduct borrowing operations with banks. (R. 129, 130) These suggestions were discussed with H. L. Stuart in the spring or summer of 1930. (R. 130, 148) Stuart commented that if Long-Bell found that it could carry commercial bank loans only by having a separate subsidiary, that was probably the thing to do. (R.

148, 149) On June 30, 1930 Stuart wrote Long, stating in part:

> "Perhaps your banks, except for Mr. Lonsdale's, had behaved themselves very well. (R. 441) * * * I am sure that Mr. Andrews gave you my message, which was to ask you to kindly let me know the outcome of your next talk with the Chase Bank." (R. 442, 105)

The Mr. Lonsdale referred to was the head of a St. Louis bank which had refused to renew Long-Bell's line of credit. (R. 105, 348)

It thus definitely appeared that respondent purchased the bonds solely upon the strength of the Long-Bell guarantee, and did not consider the real estate assessments as affording substantial security. In 1930 when these bonds were sold to petitioner, respondent and its officers well knew that the Long-Bell guarantee, which alone gave the bonds value, was seriously impaired, yet it offered the bonds to petitioner, stressing the location and importance of the City of Longview, and led petitioner to believe that Long-Bell was in financially sound condition.

In October, 1930, Long-Bell created a new subsidiary corporation, called Long-Bell Lumber Sales Corporation, to which it conveyed as of November 1, 1930, practically all its liquid and unencumbered properties, its retail sales yards and most of its cash. (R. 132) The Sales Corporation leased the mills and manufacturing plants and became the active company in dealing with the public, taking over substantially the entire active personnel of Long-Bell. (R. 133) The Lumber Company retained its encumbered property. (R. 133) In June, 1934, the Lumber Company filed a petition for reorganization under Sec. 77-B of the Bankruptcy Act. (R. 134) In December, 1935, by the terms of the decree of the United States District Court for the Western District of Missouri, the Lumber Company was relieved of its guaranty of the Longview local improvement bonds,

and Petitioner received, in lieu of such guaranty, 8.4 shares of common stock in the reorganized corporation for each $1,000 bond held by it. (Ex. B-53) This stock had a market value per share in December, 1935 of $8 bid, $12 asked. (R. 139)

Long-Bell defaulted in payment of the local improvement assessments upon lots and lands in the various local improvement districts in 1931, and also in payment of general taxes. Cowlitz County foreclosed its lien for general taxes in 1937, and received a tax deed in 1938 which wiped out the lien of the local improvement assessments. (R. 266-267)

Petitioner alleged fraud in four respects:

(a) The location of the industrial plants,

(b) The frontage upon the Columbia River,

(c) The Wood letter of May 14, 1930, and

(d) Making misleading statements as to the financial soundness of Long-Bell, while concealing and failing to disclose other facts which, if disclosed, would have changed the effect of the facts stated.

The District Court submitted the case to the jury, which awarded petitioner $66,150 damages, and judgment on the verdict was entered. (R. 625) The Circuit Court of Appeals for the Seventh Circuit reversed the judgment on the sole ground that no actionable fraud was shown. That court held that although the representations as to the industrial plants and the frontage upon the Columbia River were false and misleading, the evidence was insufficient to justify a finding that respondent knew that the statements were false. Although the false representations were contained in the exhibits submitted to Hubbell in response to his request for more information, since they were substantially the same as those set forth in the offering circular, the so-called "edge clause" relieved respondent from li-

ability for such statements. The Appeals Court likewise held that the statements of Wood that the city "has no funded debt other than these improvement bonds," and that "You have before you practically all the data," while carelessly made, were of trivial materiality, because the Long-Bell balance sheet, furnished to Hubbell, contained an entry that Long-Bell had guaranteed some diking bonds, the location of which was not shown, and that in any event, Hubbell was not misled, because he testified on cross examination that it was not his general custom, in 1930, in the purchase of municipal securities, to investigate the extent of bonds issued by overlapping municipalities. The court said that respondent's failure to disclose that it had handled the bonds solely on the basis of Long-Bell's guarantee, and would not have dealt with them at all without the guarantee, presented a more perplexing question, but that under the facts disclosed, there was no duty upon respondent to make such disclosure, since the parties were dealing at arm's length.

With respect to charges of fraud in concealing Long-Bell's true financial condition, the court said that the evidence presented only a failure to disclose facts, not amounting to fraud, and in any event, petitioner could, by proper investigation, have ascertained the true facts, and for these reasons, the District Court should have withdrawn the case from the jury. (R. 657-673) Timely petition for rehearing was filed and denied. (R. 699)

JURISDICTION.

1. The jurisdiction of this court to review the judgment and decision of the United States Circuit Court of Appeals for the Seventh Circuit is expressly provided for by Judicial Code, Section 240, as amended by the Act of February 13, 1925. This cause originated in the United States Dis-

trict Court, for the Northern District of Illinois, and an appeal was taken from the judgment of that court to the United States Circuit Court of Appeals. The jurisdiction of this court is, therefore, beyond question.

2. The date of the judgment sought to be reviewed is June 19, 1940. (R. 699) The opinion of the United States Circuit Court of Appeals for the Seventh Circuit was filed April 27, 1940, but petition for rehearing was filed and denied. (R. 657)

THE QUESTIONS PRESENTED.

The questions presented may be summarized as follows:

1. Does the inclusion by a dealer of a so-called "hedge clause" in an offering circular describing securities which states that the information therein contained is not guaranteed, but has been gained from sources believed to be reliable, and that the dealer has relied upon the facts stated in purchasing the securities, relieve such dealer from liability for false and fraudulent statements made by means other than the offering circular itself, particularly when it appears, by the admission of the dealer, that he dealt in the securities, not in reliance upon the facts set forth in the circular, but solely because the bonds were guaranteed by a corporation?

2. Is a dealer in securities, who knows that the securities which he offers for investment have no substantial value aside from the guarantee of a corporation, as a matter of law, free from actionable fraud, where he furnishes information indicating that the bonds are attractive investments and, at the request of the purchaser, supplies information indicating that the guarantor is in sound financial condition, and withholds the fact, known to him, that the guarantor is financially embarrassed, and about to transfer all its liquid and unencumbered properties to a new

subsidiary corporation for the purpose of preferring certain of its creditors?

3. Is a dealer in bonds and investment securities, as a matter of law, free from actionable fraud when the evidence discloses that in response to a request from a prospective purchaser for information concerning a corporation, which has guaranteed payment of principal and interest of a bond issue, he submits a balance sheet showing a relatively sound financial condition, and later solicits the purchaser to buy additional bonds of the same issue without disclosing the fact, which he has meantime learned, that the guarantor corporation has organized a new subsidiary to which it is about to transfer practically all its cash and unencumbered property, leaving the guarantor without means sufficient to perform the guarantee?

4. Was the Circuit Court of Appeals for the Seventh Circuit justified in ruling, as a matter of law, that the evidence was legally insufficient to support a finding that respondent knew of the falsity of the statements contained in the offering circular and other exhibits as to the corporate limits of Longview, Washington, and its frontage upon the Columbia River, in view of the fact that the record disclosed no denial of such knowledge by respondent's officers, and that it definitely appeared that three vice presidents of respondent had made trips to Longview for the purpose of investigating bond issues involving the properties as to which representations were made, and that respondent well knew the assessed values of properties in the various districts and in the entire City of Longview?

5. Was the Circuit Court of Appeals for the Seventh Circuit justified in ruling, as a matter of law, that statements by a seller of special assessment securities, that "We believe you have before you practically all the data covering this issue of bonds," and "You observe, of course, that (the municipality) has no funded debt other than these

improvement bonds," were of trivial materiality, where it definitely appeared that the seller had withheld from the purchaser material information in his possession as to other outstanding special assessment liens superior to the issue sold, and with respect to the financial condition of the guarantor of such securities?

6. Does the fact that a purchaser of securities makes no independent investigation concerning them, but relies upon the information given him by the seller, constitute a defense to a charge of fraud, where it appears that an independent investigation would have disclosed the falsity of the statements?

7. Was the Circuit Court of Appeals for the Seventh Circuit justified in ruling, as a matter of law, that the evidence was insufficient to support a finding of actionable fraud against respondent?

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

1. The Circuit Court of Appeals for the Seventh Circuit has decided an important question of local law of wide-spread general interest, in a manner directly in conflict with applicable local decisions, and in a manner having no support whatever in judicial precedent. The appeals Court held that the so-called "hedge clause", appearing in fine print at the bottom of all offering circulars issued by bond houses, relieved respondent from liability for misrepresentations contained in the other exhibits submitted to petitioner after it requested more information than was disclosed by the circular. The Appeals Court further holds that the hedge clause of the offering circular relieved respondent from liability for statements recklessly made, without knowledge of their truth or falsity. In these respects the opinion of the Circuit Court of Appeals is with-

out support in judicial precedent, and its effect is to lay down a rule of law which substantially exempts dealers in securities from all liability for false and fraudulent representations made to induce investors to purchase securities.

2. The Circuit Court of Appeals for the Seventh Circuit, in holding that the acts of respondent in furnishing the Long-Bell financial statement of January 1, 1930, in stating that petitioner had "all the data concerning the issue," and in writing the letter of June 4, 1930, indicating confidence in Long-Bell's financial position, created no obligation on respondent to disclose the true facts as to the financial situation of Long-Bell, has determined an important question of local Iowa law in a manner directly in conflict with applicable local decisions of the State of Iowa. The Appeals Court treated the allegations of fraud, based on Long-Bell's financial condition, as involving only silence of the respondent, upon whom no duty to speak was imposed. The Iowa rule, as established by *Noble v. Renner*, 177 Iowa 509, 159 N. W. 214; *Foreman v. Dugan*, 205 Iowa 929, 218 N. W. 912, and 23 American Jurisprudence, Fraud and Deceit, Paragraphs 93 and 94, is that silence on a subject may, under certain circumstances, constitute a false representation, as much as spoken words, and that one may be guilty of fraud by speaking half-truths, or by failing to speak fully, when furnishing information to be relied upon by the other party to the transaction.

3. The Circuit Court of Appeals for the Seventh Circuit has rendered a decision in this case on an important question of local law directly in conflict with the decisions of other circuit courts of appeal, and with long-established principles governing actions based upon fraud and deceit, as well as in conflict with the decisions of the Iowa Supreme Court. The decision in this case conflicts with that of *Loewer v. Harris*, 57 Fed. 368, (C. C. A. 2nd Cir.), wherein the rule was stated that when one party, pending nego-

tiations for a contract, holds out the existence of certain material facts, and learns, while negotiations are pending, that a change has occurred, of which the other party is ignorant, good faith and common honesty require him to correct the misapprehension which he has created.

The decision in this case is likewise directly in conflict with the decision of the Seventh Circuit Court of Appeals itself in *Cable v. United States Life Insurance Company*, 111 Fed. 19, in which the rule was laid down,

> "If one would deal at arm's length, he must remain silent. He may not speak that which is certain to deceive, and suppress that which would challenge attention disclosing the truth."

The decision of the Seventh Circuit Court of Appeals in this case is likewise directly in conflict with the decision of the Circuit Court of Appeals for the Fourth Circuit in *Thermoid Rubber Company v. Bank of Greenwood*, 1 Fed. (2) 891, which was a case dealing with the liability of a bank for furnishing misleading information concerning the credit standing of a third party. The court there held that furnishing facts which were true, but at the same time withholding information which materially changed the effect of the facts stated, constituted actionable fraud.

4. The Circuit Court of Appeals for the Seventh Circuit in its decision in this case has substituted its own judgment for that of the trial court and the jury upon conflicting facts, and in such respect has so far departed from the accepted and usual course of judicial procedure as to call for an exercise of the supervisory power of this court. The opinion of the Appeals Court holds that the representations that Longview had no funded debt "other than these improvement bonds," and that petitioner had "substantially all the data," were of "trivial materiality." These statements were contained in a letter written by respondent's sales manager to petitioner's vice president, making

formal offering of the Longview bonds. To hold that such statements are of "trivial materiality" is a very clear invasion of the province of the jury. The Appeals Court has likewise substituted its judgment, upon the facts, for that of the jury below in holding that the evidence that three vice presidents of respondent made trips to Longview for the purpose of investigating the Long-Bell mill properties and the diking and improvement districts was not sufficient to justify a finding by the jury that respondent knew that the mill properties were outside the corporate limits.

5. The Circuit Court of Appeals for the Seventh Circuit has in the decision of this case substantially applied the rule of *caveat emptor* to purchases by an investor of municipal special assessment securities, the subject matter of which is located at a point far removed from the place where the transaction was consummated, in violation of established principles of local law recognized by both state and federal courts. The rule of *caveat emptor* has never, until the decision of the Circuit Court of Appeals in this case, been applied to business transactions entered into upon the strength of representations concerning the credit and financial standing of third persons, and the rule has been well established that *caveat emptor* is without application where both parties do not have equal knowledge, or means of knowledge, concerning the subject matter. The decision of the Seventh Circuit Court of Appeals ignores these well established rules.

6. The Seventh Circuit Court of Appeals has based its decision in this case, in part at least, upon the fact that petitioner failed to investigate the securities, and failed to discover what an investigation might have disclosed. The Appeals Court decision in this respect rests upon a misapprehension of the Iowa law, and is directly in conflict with applicable local decisions of the Supreme Court of Iowa. The Iowa law is that negligence of a defrauded vendee

cannot be pleaded as a defense. See *Bean v. Bickley*, 187 Iowa 689, 174 N. W. 675, and *Ford v. Ott*, 186 Iowa 820, 173 N. W. 121.

A certified copy of the record in said suit in the United States Circuit Court of Appeals for the Seventh Circuit, including the record, proceedings, opinion and disposition of the cause had in said court, is herewith furnished and lodged in the office of the Clerk of this court in compliance with Rule 38 of the rules of this court.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of, and under the seal of this court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that court to certify and to send to this court, for its review and determination, a full and complete transcript of the record and all the proceedings had in the case numbered and entitled on its docket as No. 7032, Equitable Life Insurance Company of Iowa, Appellee v. Halsey, Stuart & Co., Appellant, and that the said opinion and judgment of the United States Circuit Court of Appeals for the Seventh Circuit may be reversed by this court, and that petitioner have such other and further relief in the premises as to this court may seem meet and just.

EQUITABLE LIFE INSURANCE COMPANY OF IOWA,

By Joseph G. Gamble,

Alden B. Howland,

Attorneys for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

SUMMARY OF ARGUMENT.

I.

The so-called "hedge clause" of the offering circular in which respondent represented that "all statements herein are official, or are based on information which we regard as reliable, and while we do not guarantee them, we, ourselves, have relied upon them in the purchase of this security," cannot be construed to relieve respondent from liability for misrepresentations recklessly made through means other than the offering circular itself.

Davis v. Central Land Company, 162 Iowa 269, 143 N. W. 1073.

Haigh v. White Way Laundry Company, 164 Iowa 143, 145 N. W. 473.

A.

Since respondent did not purchase the local improvement bonds in reliance upon the security of the real estate assessments, as the circular indicated, the statement in the hedge clause that it did so, was essentially misleading, and was itself a fraudulent representation.

II.

The record shows that respondent was not merely silent with respect to the financial condition of Long-Bell, guarantor of the bonds, but indulged in half-truths, made affirmative statements and representations misleading in character, and by suppressing the true facts created a false and fraudulent impression as to the financial stability of Long-Bell. The conclusion of the Circuit Court of Appeals

that respondent was under no duty to disclose the true facts ignores established rules of law.

23 American Jurisprudence, Fraud and Deceit, Pars. 93 and 94.
Noble v. Renner, 177 Iowa 509, 159 N. W. 214.
Foreman v. Dugan, 205 Iowa 929, 218 N. W. 912.
Loewer v. Harris, 57 Fed. 368, (C. C. A. 2nd Cir.).
Cable v. United States Life Insurance Co., 111 Fed. 19 (C. C. A. 7th Cir.).

A.

Where positive representations are made which are true when made, but while the transaction is pending conditions substantially change, to the knowledge of the party making the original representations, good faith and common honesty require that the party making the representations advise the other that the change has taken place, and failure to disclose the fact of such change constitutes actionable fraud.

Loewer v. Harris, 57 Fed. 368, (C. C. A. 2nd Cir.).
Noble v. Renner, 177 Iowa 509, 159 N. W. 214.

III.

The conclusion of the court that the Wood letter of May 14, 1930, which stated "We believe you have before you practically all the data covering this issue of bonds," and "You observe, of course, that this city has no funded debt other than these improvement bonds," was of trivial materiality, substitutes the judgment of the court for that of the jury upon the weight of the evidence.

IV.

The rule of *caveat emptor* may not be applied to business transactions concerning the credit and financial standing of third persons. Even where one is under no obli-

gation to supply information as to the credit standing of a third person, if he voluntarily undertakes to do so, and leads the inquirer to believe that the credit of such third person is essentially different from the facts within his knowledge, and fails to disclose information vitally affecting the credit of such third person, he is liable for fraud to one extending credit to the third party upon the faith of such representations.

23 American Jurisprudence, pg. 869, Fraud and Deceit, Par. 89.
Iasigi v. Brown, et al., 17 Howard 183, 15 L. Ed. 208.
Thermoid Rubber Company v. Bank of Greenwood, 1 Fed. (2d) 891, (C. C. A. 4th Cir.).

V.

That appellee might have learned the true facts with respect to the location of the Long-Bell and Weyerhaeuser mills by independent investigation, or could have learned of Long-Bell's earnings from other sources, is no defense to a charge of fraud. The Iowa law (which governs this case) is that negligence of a defrauded vendee cannot be pleaded as a defense by a guilty vendor.

Bean v. Bickley, 187 Iowa 689, 174 N. W. 675.
Hetland v. Bilstad, 140 Iowa 411, 118 N. W. 422.
Ford v. Ott, 186 Iowa 820, 173 N. W. 121.
Martin v. Burford, 181 Fed. 922, (C. C. A. 9th).

ARGUMENT.

The record in this case discloses conduct upon the part of respondent, one of the nation's leading bond and investment houses, which should shock the conscience of any court. The holding of the Circuit Court of Appeals that no actionable fraud was shown by such conduct is all the more astounding, because in the main, and with some minor exceptions, the opinion of the Circuit Court itself discloses

the facts as developed upon the trial of the case. We have already in the foregoing petition for certiorari outlined the salient facts disclosed by the record. We shall endeavor in this argument, as briefly as possible, to demonstrate the wholly untenable character of the rules of law laid down by the Appeals Court in arriving at its decision that respondent was not shown to have been guilty of any actionable fraud.

I.

The so-called "hedge clause" of the offering circular in which respondent represented that "all statements herein are official, or are based on information which we regard as reliable, and while we do not guarantee them, we, ourselves, have relied upon them in the purchase of this security," cannot be construed to relieve respondent from liability for misrepresentations recklessly made through means other than the offering circular itself.

The Circuit Court of Appeals conceded that the statements of the offering circular with respect to the location of the industrial plants and the frontage of Longview upon the Columbia River were false and misleading, but held that such representations were improperly submitted to the jury because respondent had "guarded itself against liability for possible inaccuracy by the hedge clause in the prospectus," (R. 667) and because it concluded the evidence was insufficient to establish that respondent and its officers knew that the statements of the offering circular were false.

The conclusion of the Appeals Court that the evidence was insufficient to support a finding that respondent knew the true location of the industrial plants adjacent to the Longview corporate limits is not sustained by the record. The record shows that in the course of its dealings with Long-Bell, respondent sent three different vice presidents

to Longview for the purpose of investigating the security offered for issues of mortgage bonds totaling more than $25,000,000. A very vital part of this security were the immense lumber mills described as the "world's largest," which were located just outside the corporate limits of Longview. F. K. Shrader, respondent's vice president, made two trips to Longview in connection with the mortgage bonds, and MacNeille made some two or three. (R. 214) In addition, Walter I. Sleep, another vice president of respondent, made a trip to Longview in May, 1925, and there entered into a contract for the purchase of the first block of local improvement bonds which respondent purchased from Long-Bell. Other purchases were made in 1926 and 1927.

In addition to these facts, R. E. Simond, another vice president of respondent, through correspondence with Long-Bell's lawyer at Longview, learned in 1927 that the total assessed valuation of the whole City of Longview was $3,-439,918. The opinion of the court points out that the facts with reference to the location of the mills and the corporate limits of Longview were easily ascertained by petitioner's representative Windsor in 1931, on a one days trip.

In view of the number of issues of securities which respondent underwrote and handled for the Long-Bell interests, all of which were intimately connected with the City of Longview and the mill properties of Long-Bell, we submit that the conclusion of the Circuit Court of Appeals that no jury issue was presented as to respondent's knowledge of the location of the corporate limits of Longview, is clearly untenable. It is seldom, indeed, in fraud cases that knowledge of the true facts on the part of a defendant can be shown by direct admissions. In the great majority of cases guilty knowledge on the part of a defendant is established, just as it was in the case at bar, by proof of facts

and circumstances from which the conclusion that defendant did know the facts may be inescapably drawn.

But we desire the court to consider the question in a slightly different light. The opinion of the Circuit Court of Appeals in this case concedes that statements recklessly made by a defendant, without knowledge of falsity, for the purpose of inducing the other party to act, may be equally as culpable as statements made with full knowledge of their falsity. This is the rule which obtains in Iowa. In *Davis v. Central Land Company*, 162 Iowa 269, 143 N. W. 1073, the Iowa Supreme Court, in considering a charge of fraud based on representations as to the location of a boundary line between adjoining properties, said:

> "The fraud alleged consisted in the reckless assertion as true that of which the party knew nothing which was definitely ascertainable, and in deceiving the other party thereby. The principle is well established by the authorities, and the evidence was such as to carry the issue of fraud to the jury."

And see the later case of *Haigh v. White Way Laundry Company*, 164 Iowa 143, 145 N. W. 473, where in considering the sufficiency of the allegations of a petition with respect to the validity of a personal injury release, the Iowa Supreme Court said:

> "Where a false representation is relied upon as constituting fraud, it must be shown to have been knowingly made, with intent to mislead, or that the party made the statement as true, with no reasonable ground to believe it to be true, for the purpose of inducing the other to act. * * * So, in this case, it is immaterial whether or not the company, by its agent, knew or did not know whether the tendons of plaintiff's hand were in fact injured, for the reason that the defendant, through its agent, asserted it as a fact (and it was a material fact) for the purpose of inducing the plaintiff to believe it was true, and that her injuries were trifling; that she would soon recover. * * * The fraud

consists in asserting that to be true which was not true; which the defendant did not know to be true; made with the wrongful purpose and resulting in injury to plaintiff."

The record shows that petitioner's vice president, Hubbell, was not satisfied with the information contained in the offering circular, and requested that other facts be given him. In response to this request, the rotogravure magazine, the chamber of commerce booklet, and other data were supplied. These statements became representations made by respondent, and for that reason, even though it be conceded that the evidence did not show that respondent knew that the statements were false, a jury question was still presented upon the issue of the reckless character of the assertions.

A.

Since respondent did not purchase the local improvement bonds in reliance upon the security of the real estate assessments, as the circular indicated, the statement in the hedge clause that it did so, was essentially misleading, and was itself a fraudulent representation.

There is another aspect of the matter which we desire to call to the attention of this court, which was ignored by the Circuit Court of Appeals. The offering circular recited that respondent had itself relied upon the information set forth therein in the purchase of the securities. This statement was shown to have been false by the testimony of Simond, who said that respondent paid no attention whatever to the assessments and purchased the bonds solely because they were guaranteed by Long-Bell, and would have had nothing to do with them otherwise. By respondent's own admission the statement in the hedge clause itself was a false and misleading representation.

In the case at bar no officer or representative of respondent testified that he believed that the Long-Bell and Weyerhaeuser mills were within the city limits of Longview. It is true that one of the offering circulars, after its preparation, was shown to have been sent to the Long-Bell officers in Kansas City, Mo., for comment, and that the Long-Bell officers took no exception thereto, but respondent did know that it was not relying upon the real estate security in any degree in the purchase of the bonds, and it falsely stated that it had done so. Under these circumstances, no court has ever held that the so-called "hedge clause" constitutes a defense to misrepresentations, and we cannot believe that the decision of the Circuit Court of Appeals in this case is a correct statement of the rule of law which should govern.

II.

The record shows that respondent was not merely silent with respect to the financial condition of Long-Bell, guarantor of the bonds, but indulged in half-truths, made affirmative statements and representations misleading in character, and by suppressing the true facts created a false and fraudulent impression as to the financial stability of Long-Bell. The conclusion of the Circuit Court of Appeals that respondent was under no duty to disclose the true facts ignores established rules of law.

The Circuit Court of Appeals disposed of the claim of fraud based upon misrepresentations as to the financial condition of Long-Bell, guarantor of the bonds, as involving nothing more than a failure to disclose facts within respondent's knowledge. The court concluded that there was no duty upon the respondent, as a matter of law, to make disclosure of the facts within its knowledge, and that hence no actionable fraud was shown.

We may concede, of course, that a seller of securities is not bound to make any disclosure whatever concerning his knowledge of them to a prospective purchaser. Although he may know of facts which render the securities substantially worthless, we concede that the law is that he is guilty of no actionable fraud if he says nothing calculated to mislead or deceive a prospective purchaser, but when he elects to furnish information in response to inquiries, or otherwise, a dealer in securities is not at liberty to pick and choose the favorable facts, without revealing other facts which substantially change the effect of the facts stated.

In the course of its opinion the Appeals Court quoted with approval the text of 23 American Jurisprudence, Fraud and Deceit, Paragraph 93, in which the rule is stated that silence alone does not usually constitute fraud, but in the very next paragraph of the same work, we find this statement which is directly applicable to the case at bar:

> "Very little in addition to non-disclosure of material facts is required to prevent the application of the general rule which renders mere silence non-actionable and to make a party guilty of fraud. For instance, statements ordinarily regarded as expressions of opinion may be considered as sufficient where calculated to mislead and to prevent an examination of the property involved, or to throw the owner off his guard in order to gain the property from him. Indeed, it has been said that the least degree of misrepresentation constitutes very potent evidence of fraud, under such circumstances, and that a single word, a nod, a wink, a shake of the head, or a smile intended to induce the belief in the existence of a non-existing fact, may be sufficient."

No better statement of the true rule applicable to this case can be found than that contained in the opinion of the Seventh Circuit Court of Appeals itself in *Cable v. United States Life Insurance Company*, 111 Fed. 19, decided Octo-

ber 1, 1901. There Circuit Judge Jenkins, in a fraud case, involving the validity of a policy of life insurance, stated the rule in these words:

> "It is a general rule that meditated silence, there being no duty to speak, will not avail to avoid a contract. There being no duty to communicate intelligence, the one party is not bound to speak although he may know that the other party lies under a mistake. This is because the parties are dealing with each other at arm's length. But even in such case the *suppressio veri* must rest in silence, not in partial and misleading statement. The latter amounts to *suggestio falsi;* for, as has well been said, 'a half truth is often the greatest of lies.' If one would deal at arm's length, he must remain silent. He may not speak that which is certain to deceive and suppress that which would challenge attention, disclosing the truth. If the matter be with respect to a material fact, which, if known to the one party and not to the other, would, if disclosed, induce that other to refrain from contracting, either wholly or upon the terms proposed, the one having knowledge of the fact, if under no duty to disclose, may not by a partial statement throw the other party off his guard, when disclosure of the truth and the whole truth would have prevented his action."

That pronouncement of the Circuit Court has been expressly adopted by the Iowa Supreme Court in the case of *Noble v. Renner,* 177 Iowa 509, 159 N. W. 214.

Respondent in the case at bar was not merely silent with respect to the Long-Bell guarantee. It furnished a balance sheet and financial statement of Long-Bell as of January 1, 1930, with full knowledge that the financial condition thus disclosed had materially changed. On May 14, 1930 respondent's Chicago sales manager Wood wrote the letter, Exhibit B-24, in which petitioner was informed that it had been furnished "practically all the data covering this issue of bonds." This statement was clearly calculated to lead petitioner's officers to believe that it had received all of respondent's information concerning the issue.

In addition, it appears that on June 4, after the purchase of the first $100,000 of the Longview bonds, respondent's sales manager wrote a further letter, designated Exhibit B-40, and reproduced at R. 483. In this letter Wood stated that certain trunk line railroads operating in the Pacific North West might purchase Long-Bell's subsidiary railroad. With respect to this rumor Wood said:

> "This rather emphasizes not only the importance of this particular asset of the Long-Bell Lumber Company, but also the importance of Longview, Washington itself. Regardless of whether this does or does not take place, the reflection on Longview, Washington cannot be other than favorable.
>
> "Incidentally, I think you might be interested in knowing that within the past few days they have undertaken the retirement of a very substantial amount of Long-Bell Lumber Company mortgage bonds from funds which became available from the sale of capital assets not necessary to the successful operation of this company."

We have then in the case at bar, much more than mere silence upon the part of respondent. We have active misrepresentation, plus concealment, which brings the case clearly within the rule laid down by the authorities cited above. Respondent, through its sales department, by these half-truths, created an essentially false impression in the minds of petitioner's officers as to the financial and credit standing of Long-Bell.

We submit, therefore, that the opinion of the Circuit Court of Appeals is obviously wrong; that it is based upon a false premise and a misconception of the true rule of law which should govern this case.

A.

Where positive representations are made, which are true when made, but while the transaction is pending, conditions substantially change, to the knowledge of the party making the representations, good faith and common honesty require him to advise the other that the change has taken place, and failure to disclose the change constitutes actionable fraud.

There is another phase of this case which was wholly ignored by the Circuit Court of Appeals. The rule laid down both by the federal courts and by the Supreme Court of Iowa is in accord with the statement appearing in the preceding paragraph.

The Iowa Supreme Court in the case of *Noble v. Renner*, 177 Iowa 509, 159 N. W. 214, stated the rule under these circumstances as follows:

> "Even if representations are true when made, and they subsequently become false by change in the subject matter, it is the duty of the person who made these representations to inform the other, and if he fails so to do, he is guilty of fraud."

This rule has always obtained in the federal courts, and is well illustrated by the opinion of the Second Circuit Court of Appeals in *Loewer v. Harris*, 57 Fed. 368, in which that court stated the rule as follows:

> "The law requires disclosure to be made only when there is a duty to make it, and this duty is not raised by the mere circumstance that the undisclosed fact is material, and is known to the one party and not to the other, or by the additional circumstance that the party to whom it is known knows that the other party is actually in ignorance of it; but when one of the parties, pending negotiations for a contract, has held out to the other the existence of a certain state of facts material to the subject of the contract, and knows that

> the other is acting upon the inducement of their existence, and, while they are pending, knows that a change has occurred of which the other party is ignorant, good faith and common honesty require him to correct the misapprehension which he has created. It becomes his duty to make disclosure of the changed state of facts, because he has put the other party off his guard. The doctrine is thus stated by Mr. Pollock, in his work, Principles of Contracts, page 491: 'It is sufficient if it appears that the one party knowingly assisted in inducing the other to enter into the contract by leading him to believe that which was known to be false. Thus it is where one party has made an innocent misrepresentation, but, on discovering the error, does nothing to undeceive the other."

If there be any question in this record as to respondent's knowledge of the true financial picture of Long-Bell at any time, it is abundantly established that respondent did have full knowledge of the demands of commercial bankers some time prior to June 30, 1930. In the months of August and September, 1930, in reliance upon the original statements, petitioner purchased from respondent $35,000 of local improvement district bonds, and in October, $202,000 of such securities.

The case at bar, therefore, comes squarely within the rule laid down by the authorities above cited. It is conceded that Halsey, Stuart never transmitted to petitioner the fact that the Long-Bell guarantee had become impaired. The opinion of the Circuit Court of Appeals for the Seventh Circuit holds that there was no duty to make this disclosure. We submit that such a rule of law is preposterous as applied to modern conditions, and particularly as applied to the purchase of a block of municipal securities of a city located 2,000 miles distant from the place where the transaction is consummated.

The decision of the Circuit Court of Appeals strictly applies to this case the doctrine of *caveat emptor*. This an-

cient rule, while not without proper application, has been distinctly repudiated by practically every court in the land as applied to transactions where the parties are dealing with subject matter not readily accessible, and particularly where the subject of the representations is the financial standing or credit of a third party. For these reasons we say that the opinion of the Circuit Court of Appeals is so clearly untenable, so contrary to the rules of law laid down by the courts in modern times, that the supervisory power of this court should be exercised for the purpose of reviewing the judgment below.

III.

The conclusion of the court that the Wood letter of May 14, 1930, which stated, "We believe you have before you practically all the data covering this issue of bonds", and "You observe, of course, that this city has no funded debt other than these improvement bonds," was of trivial materiality, substitutes the judgment of the court below for that of the jury upon the weight of the evidence.

The Circuit Court of Appeals pointed out in its opinion that the statements contained in the Wood letter of May 14, 1930 were careless; that the letter implied that the bonds involved were part of the funded debt of the city, and that there were no other obligations equal or superior to them. The court concluded, however, that, in view of Hubbell's statement on cross examination, that in purchasing municipal issues, he did not, as a general custom, pay attention to overlapping municipal sub-divisions, the materiality of the letter and its possible implications were trivial.

Hubbell, petitioner's vice president, knew Wood, and knew that he was a responsible officer of Halsey, Stuart & Co. The Wood letter was written, according to the testi-

mony of respondent's salesman Kelley, at Hubbell's request. Were not these statements, under the circumstances disclosed, something more than mere careless sales talk? Would not any well informed purchaser of bonds understand from the plain recitals of this letter that he had received all material facts in respondent's possession, and that the issue constituted the only outstanding assessment securities of the City of Longview?

Petitioner was informed that more than one-third of the bonds originally issued had been retired, and that only $2,000,000 remained outstanding. Had these been the only special assessment liens upon the property, the situation would have been vastly different. The diking district bonds amounting to $2,554,000, were outstanding, and were principally secured by liens upon the properties within the City of Longview. These facts make it clear that the representation that there were no other securities outstanding was vitally material as an inducement to petitioner to purchase the bonds.

Respondent was not merely silent with respect to the existence of the diking district bonds and assessments. There was a direct, positive representation that there was no other funded debt "other than these bonds." Had the quoted portion of the statement been omitted, the representation would have been true, but as made, the statement is directly calculated to lead a prospective purchaser to believe that there were no other outstanding bonds in Longview.

Under these circumstances, we submit that the Wood letter was definitely material, and that it was proper for consideration by the jury. The Circuit Court of Appeals has not ruled that the letter should have been excluded from evidence, but that is the necessary result of the decision. It seems to us very clear that the Circuit Court of Appeals has merely substituted its own judgment for that

of the jury below as to the weight to be accorded the Wood letter. This is obviously beyond its province.

IV.

The rule of caveat emptor may not be applied to business transactions concerning the credit and financial standing of third persons. Even where one is under no obligation to supply information as to the credit standing of a third person, if he voluntarily undertakes to do so, and leads the inquirer to believe that the credit of such third person is essentially different from the facts within his knowledge, and fails to disclose information vitally affecting the credit of such third person, he is liable for fraud to one extending credit to the third party upon the faith of such representation.

The Circuit Court of Appeals, as we have already seen, applied the rule of *caveat emptor* to the purchase of Longview improvement bonds by petitioner. In this respect the decision below is a distinct departure from every case which we have examined on the subject. The courts, both state and federal, have long recognized that the rule of *caveat emptor* cannot be applied to representations concerning the financial standing or credit of a third person, and the cases cited in the Summary of Argument fully bear out this contention.

V.

That Petitioner might have learned the true facts with respect to the location of the Long-Bell and Weyerhaeuser mills by independent investigation, or could have learned of Long-Bell's earnings from other sources, is no defense to a charge of fraud. The Iowa law (which governs this case) is that negligence of a defrauded vendee cannot be pleaded as a defense by a guilty vendor.

The Circuit Court of Appeals points out in its opinion (R. 671, 672) that petitioner made no independent investigation concerning the Longview bonds; that when it became suspicious and sent a representative to Longview, it was able to find out the facts at once, and "there is nothing to suggest why it could not have found them with equal facility before it purchased the bonds." The court also points out that had petitioner resorted to the financial news services in May and July, 1930, it could have learned that Long-Bell had incurred operating losses in the early months of that year.

The Circuit Court of Appeals considered the facts set forth above as of major importance. They were utterly immaterial under the rule of law which has long obtained in Iowa, for it is well established that contributory negligence on the part of a defrauded purchaser is no defense. In *Ford v. Ott*, 186 Iowa 820, 173 N. W. 121, the Iowa Supreme Court stated the rule in this language:

> "The law will not allow one committing a fraud to protect himself by the claim that his victim was easily deceived, and did not act in the matter with reasonable prudence."

Furthermore, had petitioner resorted to the financial news services it would have learned merely that Long-Bell had sustained operating losses in the first and second quar-

ters of the year 1930. While these facts were of considerable importance, as indicating the trend of Long-Bell business, still they were but minor items compared with the contemplated dismemberment of the Long-Bell organization, and the creation of the new Sales Corporation for the purpose of placing the bank creditors of Long-Bell in preferred position.

The Circuit Court of Appeals has, we submit, wholly disregarded the Iowa decisions on this phase of the case.

It is therefore respectfully submitted that this case is one calling for the exercise by this court of its supervisory powers over the judgments and decrees of Circuit Courts of Appeal. In order that the errors committed by the Seventh Circuit Court of Appeals may be corrected and that petitioner may have the benefit of the rights to which it is entitled under the laws of Iowa a writ of certiorari should be granted and this court should review the decision of the Seventh Circuit Court of Appeals and finally reverse it.

Respectfully submitted,

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Attorneys for Petitioner.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1940.

No. 291.

EQUITABLE LIFE INSURANCE COMPANY OF IOWA,
Petitioner,

vs.

HALSEY, STUART & CO., A Corporation, *Respondent.*

BRIEF OF PETITIONER.

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SUMMARY OF ARGUMENT.

The representations made by respondent to petitioner were made in Iowa, and the contract for the purchase of the bonds was there consummated. This case, and the rights and liabilities of the parties, are, therefore, to be determined by the law of Iowa 19

I.

The so-called "hedge clause" of the offering circular, "all statements herein are official, or are based on information which we regard as reliable, and while we do not guarantee them, we, ourselves, have relied upon them in the purchase of this security," does not relieve respondent from liability for misrepresentations, falsely or recklessly made 19, 23

A.

Respondent adopted the representations contained in the rotogravure magazine, the Chamber of Commerce booklets, and the magazine advertisements, by delivering them to petitioner in response to a request for more information than contained in the offering circular. The "hedge clause" may not be construed to relieve respondent from responsibility for such statements 19, 24

B.

Since respondent in fact purchased the local improvement bonds solely in reliance upon the Lumber Company's guarantee, and paid no attention to the assessments upon Longview real estate, the statement in the "hedge clause" that respondent had relied upon the facts therein stated in the purchase of the securities, was essentially misleading, and constituted a false and fraudulent representation, and presents no defense to a charge of fraud 20, 25

C.

The record presents a question for the jury as to respondent's liability for fraud, based upon statements recklessly made, without knowledge as to their truth or falsity 20, 28

II.

II.

The Seventh Circuit Court of Appeals overlooked, misconstrued or disregarded the evidence disclosed by the record, which justified a finding by the jury that respondent well knew the falsity of the statements in the offering circular, and other exhibits, as to the frontage of the city upon the Columbia River, and the location of the Long-Bell, Weyerhaeuser and Longview Fibre plants outside the limits of the city 20, 32

III.

Respondent was not merely silent with respect to the financial condition of the Lumber Company, guarantor of the bonds, but indulged in half-truths, made affirmative statements and representations, misleading in character, and by suppressing the true facts, created a false and fraudulent impression as to the financial stability of the Lumber Company. The conclusion of the Circuit Court of Appeals that respondent was under no duty to disclose the true facts, is contrary to established rules of law 21, 38

A.

Where positive representations are made, which are true when made, but pending the transaction conditions substantially change, to the knowledge of the party making the original representations, good faith and common honesty require that the party making such representations advise the other of the change which has taken place, and failure to do so constitutes actionable fraud 21, 52

IV.

The rule of caveat emptor has no application to business transactions concerning the credit and financial standing of third persons. Even where one is under no obligation to supply information as to the credit standing of a third person, if he undertakes to do so, and leads the other party to believe that the credit of such third person is different from the facts within his knowledge, and fails to disclose information vitally affecting the credit of such third person, he is liable for fraud 22, 54

V.

The conclusion of the court, that the letter of May 14, 1930, stating

"We believe you have before you practically all the data covering this issue of bonds," and

"You observe, of course, that this city has no funded debt other than these improvement bonds,"

was of "trivial materiality," substitutes the judgment of the Circuit Court of Appeals for that of the jury, on the weight of the evidence 22, 59

VI.

That petitioner might have learned the true facts with respect to the location of the industrial mill properties at Longview, by independent investigation, or could have learned of the trend of the Lumber Company's earnings from other sources, constitutes no defense to charges of fraud. The Iowa law (which governs this case) is that mere negligence of a defrauded vendee can never be pleaded as a defense to a charge of fraud by a vendor 23, 63

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IN THE

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OCTOBER TERM, A. D., 1940.

No. 291.

EQUITABLE LIFE INSURANCE COMPANY OF IOWA,
Petitioner,

vs.

HALSEY, STUART & CO., A Corporation, *Respondent.*

BRIEF OF PETITIONER.

The Opinion Below.

The opinion of the Circuit Court of Appeals for the Seventh Circuit in this cause is reported as "*Equitable Life Insurance Company of Iowa v. Halsey, Stuart & Co.*, 112 Fed. (2d) 302." It appears in full at R. 657-673 inc.

Jurisdiction.

The jurisdiction of this court to review the judgment of the United States Circuit Court of Appeals, for the Seventh Circuit, is expressly provided for by Judicial Code, Sec. 240, as amended by the Act of February 13, 1925. Petitioner brought this action in the Northern Illinois District, for damages of $250,157, based upon fraud in the sale of bonds of

local improvement districts of the City of Longview, Washington.

The district court submitted the cause to the jury, which returned a verdict of $66,150, for petitioner, upon which judgment was entered. This judgment was reversed by the Circuit Court of Appeals for the Seventh Circuit, which held that the trial court should have directed a verdict for respondent. This court granted certiorari October 14, 1940.

Statement of the Case.

Petitioner, an Iowa life insurance company, instituted this action in the Northern Illinois District against respondent, an Illinois corporation, dealing in bonds and securities. Respondent, known to petitioner, and its officers, as one of the nation's leading bond and investment houses, about May 1, 1930, offered petitioner, as an investment for its policy reserves, a large block of Longview, Washington, local improvement district bonds. Respondent was represented in this transaction by its salesman Kelley. (R. 169) Kelley first delivered to F. W. Hubbell, petitioner's vice president and treasurer, an offering circular, Exhibit "B-1," describing the bonds. (R. 171, 296) Exhibit "B-1" is reproduced at R. 410-413. This circular described the bonds as payable from the proceeds of special assessments levied upon benefited properties, and guaranteed by Long-Bell Lumber Company. It contained the following statement:

> "Longview is situated about 133 miles south of Seattle at the confluence of the Columbia and Cowlitz Rivers. It has a frontage of 7¼ miles on the former, and is a port of call for ocean-going vessels midway between Portland and the Pacific Ocean. * * * Because of its natural advantages and proximity to the timber stands of the Long-Bell and Weyerhaeuser interests, Longview was selected as the site for the vast lumber manufacturing plants of these companies. The present output of the Long-Bell plants is 1,800,000 board feet per

day. The Weyerhaeuser plants are under construction. Manufacturing plants have also been erected by other concerns, including the Longview Concrete Pipe Company, the Pacific Straw Paper & Board Company, the Magor Car Corporation, the Standard Oil Company, Longview Paint & Varnish Company, and the Central Mill Works. The first unit of the plants of the Longview Fibre Company, to cost two and one-half million dollars, is now well under way."

The circular contained the following notation in fine print:

> "All statements herein are official, or are based on information which we regard as reliable, and while we do not guarantee them, we ourselves have relied upon them in the purchase of this security." (R. 413)

Kelley stated to Hubbell that these bonds were secured by assessments on properties in the City of Longview, Washington, and as additional security, carried the full and complete guaranty of Long-Bell Lumber Company. (R. 170-171) Kelley also stated that Long-Bell Lumber Company was a very large, long-established company, doing business partly in the south and partly in the west. (R. 173, 187)

After reading the circular, Hubbell asked Kelley for more information about the City of Longview, what the property was out there, and about the Long-Bell Lumber Company. (R. 187-188) In response to such request, Kelley secured from respondent's Chicago office, and delivered to Hubbell, Exhibits "B-23" and "B-25" to "B-34," inc. (R. 171) Exhibit "B-23" was a tabulation showing the amounts of bonds originally issued in each of the various improvement districts, the number of bonds previously called and redeemed, and the number outstanding. (R. 171; reproduced R. 465) Exhibit "B-25" is not reproduced in the Record, but will be found in the exhibits certified to this court. It is a rotogravure booklet of magazine size, issued by the Longview

Company, a Long-Bell Lumber Company subsidiary, and profusely illustrated with photographs of Longview. On the back of this exhibit is a map which shows the location of the Long-Bell Lumber Company mills, the property of the Weyerhaeuser Timber Company, and the City of Longview, extending along the northerly side of the Columbia River. The corporate limits of the city are not shown. The map bears a legend reciting that it

> "is intended to show in a general way the relation of the various parts of the city site to each other, and location of the city in relation to water, railroad and highway transportation facilities."

Plaintiff's Exhibit "B-27" (which has also been certified to this court) was a reprint of an advertisement published in the Saturday Evening Post. It contained an illustration of extensive manufacturing plants, beneath which appeared the following statement:

> "The thoroughly modern, electrically operated manufacturing plants shown in the above sketch are in Longview, Wn. They produce 1,800,000 feet of Douglas fir lumber a day. The buildings cover 72 acres."

Exhibit "B-28" (likewise certified to this court) is a descriptive booklet, issued by the Longview Chamber of Commerce, profusely illustrated. This booklet stated:

> "Because Longview has proven by thorough investigation to offer those essentials necessary for successful industry, great manufacturing enterprises have made, and are making investments in this new industrial city. Appreciation of the many facilities of the site first led the Long-Bell Lumber Company to select it for the greatest lumber manufacturing plants in the world. The Weyerhaeuser Timber Company, largest lumber concern in the United States, has within the past two years built and put into operation a plant of three great mills on a 700 acre site on the Longview water front."

From the offering circular, and other exhibits, Hubbell understood that the industrial plants referred to were inside the corporate limits, and subject to assessment in those improvement districts embracing substantially the whole city. (R. 172) Kelley informed Hubbell that the limits of local improvement districts, Nos. 19 and 11, were practically co-extensive with the limits of the city. (R. 174) On May 15, 1930, Hubbell received a letter from Frank A. Wood, respondent's Chicago sales manager, identified as plaintiff's Exhibit "B-24". (R. 172; reproduced R. 466) In this letter respondent offered petitioner $100,000 par value of the Longview local improvement district bonds in exchange for a like amount of State of Louisiana highway bonds, maturing in March, 1931, then owned by petitioner. $85,000 of such bonds were to be immediately delivered, and $15,000 for delayed delivery. The letter concluded:

> "We believe you have before you practically all the data covering this issue of bonds, but if you have any questions in mind, we shall be pleased, indeed, to have you call Mr. Kelley or this office for anything you may need.
>
> You observe, of course, that this city has no funded debt other than these improvement bonds, and that the original debt has been materially reduced through retirement and maturity."

The Long-Bell, Weyerhaeuser, Longview Fibre and Standard Oil Company plants were all outside the limits of Longview, and none of those properties were subject to assessment in any of the improvement districts. (R. 212) The mill properties were located between the Columbia River and the limits of the City of Longview. The city never had a frontage of 7¼ miles upon the Columbia River, and in fact no frontage at all, except for a very short distance adjacent to the Port of Longview dock. (R. 212) Substantially every lot and parcel of land included within the

local improvement districts of Longview was also included within a diking district known as Cowlitz County Consolidated Diking District No. 1. (R. 264) In May, 1930, there were outstanding $2,554,000 of Consolidated Diking District Bonds, payable from the proceeds of special assessments levied upon all lands within the district. (R. 264, 265) Respondent well knew of the outstanding diking district bonds, for it had purchased from the Long-Bell Lumber Company, and resold the entire Consolidated Diking District Bond issue in 1925. (R. 76-77)

Kelley also delivered to petitioner, Exhibit "B-34," a consolidated balance sheet of Long-Bell Lumber Company and its subsidiaries, as of December 31, 1929. (Reproduced R. 467-478, inc.) This balance sheet disclosed total assets of $116,183,706, of which current assets, comprising cash and inventories, amounted to $15,831,180. Current liabilities were $7,795,940, including bank loans of $4,000,000. The funded debt of the corporation and all subsidiaries was $41,-794,042, and capital and surplus were shown in excess of $59,000,000.

R. E. Simond, a vice president of respondent, testified, when called as an adverse witness, under rule 43-B, that in purchasing the local improvement district bonds, respondent gave no consideration to the special assessments against Longview real estate; that respondent regarded the Long-Bell Lumber Company's guarantee as the sole justification for handling the bonds, (R. 74, 81), and that respondent would not have handled the bonds at all without such guarantee. (R. 82) Respondent knew that the assessed valuations of lands within the various improvement districts in 1925, and subsequent years, were very low. (R. 80) These facts were never communicated to petitioner. (R. 315)

On May 17, 1930, petitioner purchased $85,000 of Longview local improvement bonds, exchanging a like amount of State of Louisiana Highway Bonds, which then had a market

value slightly above par. On May 26, 1930, it exchanged $15,000 of Louisiana Highway Bonds for a like amount of the Longview improvement bonds.

On June 4, 1930, Wood, respondent's Chicago sales manager, again wrote petitioner, stating that it was rumored that Long-Bell's subsidiary railroad might be purchased by certain trunk line railroads operating in the Pacific Northwest. (R. 483) With respect to this, Wood said:

> "This rather emphasizes not only the importance of this particular asset of the Long-Bell Lumber Company, but also the importance of Longview, Washington, itself. Regardless of whether this does or does not take place, the reflection on Longview, Washington, cannot be other than favorable.
>
> Incidentally, I think you might be interested in knowing that within the past few days they have undertaken the retirement of a very substantial amount of Long-Bell Lumber Company mortgage bonds from funds which became available from the sale of capital assets not necessary to the successful operation of the Company."

Subsequent purchases of the Longview improvement bonds were made by petitioner, as follows:

September 29, 1930—	$26,000	par value, for cash, at 99 3/4.
October 10, 1930—	$ 9,000	par value, for cash, at 99 3/4.
October 21, 1930—	$200,000	par value, in exchange for City of Chicago Tax Anticipation Warrants having a value slightly above par.
October 30, 1930—	$ 2,000	par value, for cash, at 99 3/4.

In all, petitioner purchased $353,000 par value of Longview local improvement bonds from respondent. (Exhibit "B-35," R. 479) Of these, $219,000 were bonds of District 11,

and $60,000 were bonds of District 19, which were the two districts which embraced the whole City of Longview. (R. 479) All negotiations for the purchase of these bonds were conducted at petitioner's office in Des Moines, Iowa, approximately two thousand miles distant from Longview, Washington. Petitioner made no independent investigation of the bonds before purchasing them. (R. 172)

A very close business relationship existed between the Long-Bell Lumber Company and respondent in the years immediately preceding 1930. Between 1922 and 1926, respondent purchased from the Lumber Company, and resold, more than $25,000,000 of First Mortgage Bonds, secured by liens upon standing timber, manufacturing plants and mill properties, including those located just outside the corporate limits of Longview. (R. 115) In 1925, respondent purchased from the Lumber Company, and resold, Cowlitz County Consolidated Diking District Bonds, guaranteed by the Lumber Company, in the amount of $3,260,000. (R. 78) In 1926, respondent purchased from the Lumber Company, and resold, $3,250,000 of Collateral Gold Notes, secured by all of the outstanding bonds of a railroad subsidiary. (R. 116) In the offering circular of that issue, respondent was referred to as the "fiscal agent" for the Lumber Company. (R. 425) Respondent also purchased from the Lumber Company, and resold, more than $3,000,000 of Longview local improvement district bonds in the years 1925, 1926 and 1927.

The Lumber Company kept respondent very closely advised of developments at Longview. F. K. Shrader, respondent's vice president, testified that respondent received reports of the Lumber Company's real estate activities in Longview, at more or less regular intervals, and that the Lumber Company intended to keep respondent posted with respect to real estate sales. (R. 157) Exhibit "P-50" is a report made by the Longview Company, one of the Lumber

Company's subsidiaries, to Mr. R. A. Long, its Chairman, at the 1927 year end, and discloses the activities of the real estate sales department at Longview. That report was found in the files of Halsey, Stuart & Co. Respondent likewise had in its file, Exhibit "P-51," which was a similar report covering the activities of the Longview real estate sales department, for the month of May, 1928, and Shrader, in response to a *duces tecum* subp produced Exhibit "B-18," a similar real estate sales repo r April, 1928. (R. 158) Exhibits "B-18," "P-50" and "P-51" are not reproduced in the record, but will be found among the exhibits certified to this court. Exhibit "P-50" discloses that during the year 1927 sales of Longview real estate by the Lumber Company's subsidiary had practically ceased. During the months of April and May, 1928, as disclosed by Exhibits "P-51" and "B-18," properties were being taken back on the forfeiture of installment sales contracts, so rapidly that, in each of those months, forfeitures and re-purchases, in number, and valuations of properties, equalled new sales. (R. 158, 159, 222-227)

In November, 1927, respondent received advance notice that the Lumber Company's directors would omit the quarterly dividend on the Class "A" stock of the holding corporation, which controlled the Lumber Company. (R. 155) In 1928, respondent conducted market operations in securities of the Lumber Company, and asked $75,000 as compensation for bringing about an improvement in the market value of the Lumber Company's bonds. (R. 88, 89, and see Exhibit "B-5," reproduced at R. 431)

In January, 1930, the Lumber Company's executives conferred with respondent with respect to a proposed merger of lumber producers in the Pacific Northwest. (R. 91, 92) See plaintiff's Exhibit "B-6," reproduced at R. 433-435, in which it was stated by the Lumber Company's officers:

"It is recognized that if the lumber industry of the Pacific Northwest is to be placed on a permanently stable and profitable basis, the desired economies effected and waste reduced, something more than the present individual and desultory attempts to regulate production, which regulation at best is only a temporary expedient to meet quickly an acute and distressing situation, must be accomplished."

In connection with its purchases of various Lumber Company's securities, respondent sent three of its vice presidents, F. K. Shrader, C. T. MacNeille and Walter I. Sleep, to Longview. (R. 116, 153) Sleep, vice president in charge of municipal securities, was in Longview when the contract for the purchase of the first Longview improvement issues was entered into. (R. 211, 212, and See Exhibit "P-34," reproduced R. 513-515, inc.) Sleep died before the trial. (R. 72) Shrader and MacNeille testified as witnesses, but neither denied knowledge that the mill properties of the Lumber Company and the Weyerhaeuser timber mills were outside the corporate limits of Longview.

During the early months of 1930, respondent was informed that the Lumber Company was endeavoring to sell its railroad subsidiary near Longview to certain trunk line railroads operating in the Pacific Northwest; that the Lumber Company was endeavoring to procure a large loan on another line of railroad at Weed, California, and to dispose of its power generating plant located adjacent to Longview, which supplied power for lighting and domestic uses in the City of Longview. (R. 142) The purpose of disposing of these properties was "to strengthen the Lumber Company's current financial position, by converting physical assets into working capital, to meet current requirements." (R. 142) Respondent was told of the Lumber Company's efforts in that direction. (R. 142)

In March and April, 1930, the Lumber Company executives applied to respondent to market a bond issue for $150,-

000, to be secured by a mortgage on the properties of the Longview Daily News, a daily newspaper at Longview, owned or controlled by the Lumber Company, and to underwrite an issue of notes to be secured by pledge of payments coming due under installment sales contracts for standing timber, which the Lumber Company had sold to others. (R. 92) On April 14, 1930, respondent's president, H. L. Stuart, advised the chairman of the Lumber Company, that

> "Long-Bell credit is selling in the market on such a basis as to make it difficult, if not too costly, to undertake the sale of notes secured by the pledge of participation certificates." (R. 93)

On May 5, 1930, Stuart suggested to Long, Chairman of the Lumber Company, that he apply to the New York banking houses of Lehman Brothers Corporation, and Goldman-Sachs, for the desired financing for the Lumber Company, stating that they

> "might be induced to make loans where the securities were not immediately marketable, but that they would probably demand a large commission or bonus." (R. 93, 94)

In that same letter Stuart stated:

> "I have not been able to see any daylight yet on just how the object can be accomplished, so far as getting a security which would be salable to the public is concerned." (R. 94)

On May 15, 1930, Long, Chairman of the Lumber Company, wrote Stuart that he had been unable to secure the desired financing in New York. (R. 94, 95) In that letter Long stated to Stuart:

> "At the present, with business conditions as they are, we also need to strengthen our current position. If this could be done to an extent by accomplishing a disposition of the timber contracts, the importance of such a

transaction is emphasized. Especially so, since we find the commercial bankers in a generally critical and sensitive attitude of mind. We, therefore, have the problem before us of meeting this situation, and doing everything possible to improve it so far as our position is concerned." (R. 94, 95)

The matter of additional financing for the Lumber Company was repeatedly brought up by its executives with respondent until sometime in June, 1930. (R. 163, 164) On June 2, 1930, Shrader, respondent's vice president, wrote the Lumber Company Chairman that difficulties in the way of marketing any securities which "have anything to do with lumber, are so great as to make it almost impossible." (R. 165)

About May 5, 1930, the Lumber Company's executives made a trip to New York City, and were there advised by the officers of the Chase National Bank of New York, that the Lumber Company's line of credit would not be renewed unless its current financial position could be strengthened. The Chase Bank suggested that a new subsidiary corporation be created which would own all liquid assets of the Lumber Company, and conduct borrowing operations with commercial banks. (R. 129, 130) These suggestions were discussed with Stuart, respondent's president, in the spring or summer of 1930. (R. 130, 148) Stuart commented that if the Lumber Company found it could carry commercial bank loans only by having a separate subsidiary, that was probably the thing to do. (R. 148, 149)

On June 30, 1930, Stuart wrote the Lumber Company Chairman, stating in part:

> "Perhaps your banks, except for Mr. Lonsdale's, had behaved themselves very well. (R. 441) * * * I am sure that Mr. Andrews gave you my message, which was to ask you to kindly let me know the outcome of your next talk with the Chase Bank." (R. 442, 105)

Mr. Andrews was the General Counsel of the Lumber Company and the Mr. Lonsdale referred to was the head of a large St. Louis bank, which had refused to renew the Lumber Company's line of credit. (R. 105, 348) In October, 1930, the Lumber Company created a new subsidiary corporation, called "Long-Bell Lumber Sales Corporation," to which it conveyed, as of November 1, 1930, practically all of its liquid and unencumbered properties, its retail sales yards, and most of its cash. (R. 132) The Sales Corporation leased the Lumber Company's mills and manufacturing plants, took over substantially all its personnel, and became the active company in dealing with the public, insofar as the manufacture and sale of lumber was concerned. (R. 133) The Lumber Company retained its encumbered properties. (R. 133)

In June, 1934, the Lumber Company filed a petition for reorganization, under Section 77-B of the Bankruptcy Act, in the United States District Court, for the Western District of Missouri. (R. 134) By the terms of the decree of that court in the reorganization proceeding, the Lumber Company was relieved of its guarantee of the Longview local improvement district bonds, and petitioner received in lieu of such guarantee, 8.4 shares of common stock in the reorganized corporation for each $1,000 Longview local improvement district bond. (See Exhibit "B-53," not reproduced in the Record, but certified to this court.) This stock had a market value per share in December, 1935, of approximately $10—$8 bid, $12 asked. (R. 139) The Lumber Company defaulted in payment of the local improvement assessments upon practically all of the unimproved lots and lands in the various local improvement districts in 1931, and also in the payment of general taxes upon its unimproved properties. Cowlitz County, Washington foreclosed its liens for general taxes of 1931 in 1937, and received a tax deed in 1938, which completely wiped out the

lien of the local improvement assessments. (R. 266-267)

Petitioner first learned of the falsity of the representations with respect to the location of the mill properties in June, 1931, when its representative, James H. Windsor, made a one day trip to Longview. (R. 183) In August, 1931, petitioner first learned that the diking assessments were liens upon the lots and lands within the City. (R. 183) Petitioner's vice president and treasurer made a trip to Longview in the summer of 1934. (R. 184) Petitioner learned in April, 1931, facts regarding the organization of the Long-Bell Lumber Sales Corporation, and that the Lumber Company had borrowed $1,000,000 from the Southern Pacific Railroad Company. Petitioner made complaint to respondent's salesman Kelley in the summer, or fall of 1931, that it had been imposed upon in the transaction. (R. 201, 209)

The complaint in this cause was filed April 10, 1935, and after certain preliminary motions, an amended and supplemental complaint was filed, in which petitioner charged respondent with fraud in the following particulars:

A. That respondent falsely represented that the large and extensive mill properties of the Lumber Company, Weyerhaeuser Timber Company and Longview Fibre Company and others, were all in Longview, and subject to assessment in local improvement districts Nos. 11 and 19, the limits of which were substantially co-extensive with the limits of the city itself.

B. That Longview had a frontage of seven and one-quarter miles upon the Columbia River, (which fact, if true, would bring the mill properties within the corporate limits) while in truth and in fact, said city had no frontage upon the Columbia River.

C. That respondent represented that the bonds were the only bonds constituting a charge or lien upon the lands in the improvement districts of the city, while in truth and

in fact, as respondent well knew, substantially every lot and parcel of land within the city was subject to the lien of large and burdensome assessments levied in the diking district.

D. That respondent, by making false and misleading representations as to the financial strength of the Lumber Company, guarantor of the bonds, and at the same time concealing and failing to disclose that the Lumber Company was in fact in precarious financial condition, misled and deceived petitioner as to the true financial condition of the Lumber Company.

Respondent's answer admitted its corporate capacity, the nature of its business and the sales of the bonds to petitioner; admitted knowledge that the major portion of all real estate in Longview was subject to assessment in the diking district; admitted that the bonds of the diking district were purchased by respondent from the Lumber Company and resold to its customers in 1925; admitted the writing of the Wood letter of May 14, 1930, Exhibit "B-24," but denied the effect of same; admitted that the offering circular contained the statements and representations charged, but alleged that it merely purported "to give a general description of the commercial activities and possibilities of the Longview community;" denied that respondent led petitioner to believe that it had furnished full, complete and accurate information as to the City of Longview; denied that it made representations to petitioner concerning the financial condition of the Lumber Company, but admitted the delivery of the January 1, 1930, balance sheet and financial statement; denied that respondent fraudulently concealed the true financial condition of the Lumber Company; admitted the formation of the Long-Bell Lumber Sales Corporation, but denied knowledge thereof at the times of the sales of the improvement bonds to petitioner; denied all allegations of damage.

The district court submitted the case to the jury, which returned a verdict for petitioner in the sum of $66,150, upon which judgment was entered. (R. 625)

The Circuit Court of Appeals for the Seventh Circuit reversed the judgment on the sole ground that the evidence was insufficient to justify a finding of actionable fraud. That court held that, although the representations as to the industrial plants, and the frontage of the City of Longview upon the Columbia River, were false and misleading, the evidence was insufficient to justify a finding that respondent knew their falsity; that since these representations, while contained in exhibits submitted to petitioner in response to a request for more information than was disclosed by the original offering circular, plaintiff's Exhibit "B-1," were substantially the same as those set forth in that exhibit, the so-called "hedge clause" of the circular relieved respondent from liability for such misstatements. That court likewise held that the statements of the Wood letter that "The city has no funded debt other than these improvement bonds," and "You have before you practically all the data," while carelessly made, were of "trivial materiality" because the Lumber Company's balance sheet disclosed that the Lumber Company had guaranteed diking bonds, the location of which was not shown, and petitioner was not misled, because Hubbell testified, on cross examination, that it was not his general custom, in 1930, in purchasing municipal securities, to investigate the extent of bonds issued by overlapping municipal sub-divisions. The appeals court said that respondent's failure to disclose that it had handled the bonds solely in reliance upon the Lumber Company's guarantee of payment, and would not have dealt with them at all, but for such guarantee, presented a more perplexing question, but that as the parties were dealing at arm's length, there was no duty upon respondent to make such disclosure. With respect to the charge of fraud in conceal-

ing the true financial condition of the Lumber Company, the appeals court said that the evidence presented only a failure to disclose facts, not amounting to fraud, and, petitioner could, by proper investigation, have ascertained the true facts, and for these reasons the district court should have withdrawn the case from the jury. (See opinion of the court below, R. 657-673)

Specification of Errors Relied Upon for Reversal.

(1) The Circuit Court of Appeals for the Seventh Circuit erred in holding that the "hedge clause" of the offering circular,

> "All statements herein are official, or are based on information which we regard as reliable, and while we do not guarantee them, we, ourselves, have relied upon them in the purchase of this security,"

relieved respondent from liability for statements falsely made, or recklessly made, by means other than the offering circular itself, particularly in view of the admission, by respondent, that it dealt in the securities, not in reliance upon facts therein stated, but solely because the bonds were guaranteed by the Long-Bell Lumber Company.

(2) The Circuit Court of Appeals for the Seventh Circuit erred in holding the evidence insufficient to support a finding that respondent knew of the falsity of the statements contained in the offering circular, and other exhibits, as to the location of the mill properties, and the frontage of the city upon the Columbia River.

(3) The Circuit Court of Appeals for the Seventh Circuit erred in holding respondent free from fraud under the record, which showed that respondent in writing represented that petitioner had received "practically all the data covering this issue," and by the letter of June 4, (Exhibit "B-40," R. 483) was told of the financial strength of the

Lumber Company, while respondent withheld facts within its knowledge which showed the guarantor corporation was financially embarrassed, and about to transfer all its liquid and unencumbered properties to a new subsidiary corporation, for the express purpose of placing its commercial bank creditors in preferred position.

(4) The Circuit Court of Appeals for the Seventh Circuit erred in holding respondent free from actionable fraud under the record, which disclosed that respondent, after furnishing a balance sheet and financial statement showing a relatively sound financial condition of the guarantor, solicited purchases of additional bonds of the same issue, without disclosing that the guarantor was about to organize a new subsidiary corporation, to which it expected to transfer all its cash and unencumbered properties.

(5) The Circuit Court of Appeals for the Seventh Circuit substituted its judgment for that of the jury below, in holding that the statements of the Wood letter,

> "We believe you have before you practically all the data covering this issue of bonds," and
> "You observe, of course, that (the municipality) has no funded debt other than these improvement bonds,"

were of "trivial materiality." The record establishes without dispute that respondent withheld from petitioner material information as to the existence of the outstanding diking bonds, and the diking assessment liens, which were superior to the local improvement assessments, and also respondent withheld material information in its possession disclosing the true financial condition of the guarantor.

(6) The Circuit Court of Appeals for the Seventh Circuit erred as a matter of law, in holding that respondent's failure to make independent investigation concerning the local improvement district bonds constituted a defense to the charges of fraud.

(7) The Circuit Court of Appeals for the Seventh Circuit erred, as a matter of law, in holding the evidence insufficient to justify submission of the issues of respondent's fraud to the jury.

SUMMARY OF ARGUMENT.

The representations made by respondent to petitioner were made in Iowa, and the contract for the purchase of the bonds was there consummated. This case, and the rights and liabilities of the parties, are, therefore, to be determined by the law of Iowa.

Beale, Conflict of Laws, pg. 1288, Sec. 378.1; Sec. 378.2, pg. 1289; Sec. 412.2, pg. 1333.
Redfern v. Redfern, 212 Iowa 454, 236 N. W. 399.
Erie Railroad Co. v. Tompkins, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188.

I.

The so-called "hedge clause" of the offering circular, "all statements herein are official, or are based on information which we regard as reliable, and while we do not guarantee them, we, ourselves, have relied upon them in the purchase of this security," does not relieve respondent from liability for misrepresentations, falsely or recklessly made.

Jordan v. Nelson, 178 N. W. 544, 10 A. L. R. 1464 (Iowa, not officially reported).
Bridger v. Goldsmith, 143 N. Y. 424, 38 N. E. 458.
23 American Jurisprudence, pg. 778, Subject—Fraud and Deceit, paragraph 26.

A.

Respondent adopted the representations contained in the rotogravure magazine, the Chamber of Commerce booklets, and the magazine advertisements, by delivering them to petitioner in response to a request for more information

than contained in the offering circular. The "hedge clause" may not be construed to relieve respondent from responsibility for such statements.

B.

Since respondent in fact purchased the local improvement bonds solely in reliance upon the Lumber Company's guarantee, and paid no attention to the assessments upon Longview real estate, the statement in the "hedge clause" that respondent had relied upon the facts therein stated in the purchase of the securities, was essentially misleading, and constituted a false and fraudulent representation, and presents no defense to a charge of fraud.

C.

The record presents a question for the jury as to respondent's liability for fraud, based upon statements recklessly made, without knowledge as to their truth or falsity.

Hanson v. Kline, 136 Iowa 101, 113 N. W. 504.
Davis v. Central Land Co., 162 Iowa 269, 143 N. W. 1073.
Haigh v. White Way Laundry Co., 164 Iowa 143, 145 N. W. 473.
Ultramares Corporation v. Touche, Niven & Co., 255 N. Y. 170, 174 N. E. 441, 74 A. L. R. 1139.

II.

The Seventh Circuit Court of Appeals overlooked, misconstrued or disregarded the evidence disclosed by the record, which justified a finding by the jury that respondent well knew the falsity of the statements in the offering circular, and other exhibits, as to the frontage of the city upon the Columbia River, and the location of the Long-Bell, Weyerhaeuser and Longview Fibre plants outside the limits of the city.

III.

Respondent was not merely silent with respect to the financial condition of the Lumber Company, guarantor of the bonds, but indulged in half-truths, made affirmative statements and representations, misleading in character, and by suppressing the true facts, created a false and fraudulent impression as to the financial stability of the Lumber Company. The conclusion of the Circuit Court of Appeals that respondent was under no duty to disclose the true facts, is contrary to established rules of law.

23 American Jurisprudence, Fraud and Deceit, Paragraphs 93 and 94.
Noble v. Renner, 177 Iowa 509, 159 N. W. 214.
Foreman v. Dugan, 205 Iowa 929, 218 N. W. 912.
Cable v. United States' Life Insurance Co., 111 Fed. 19.
Laidlaw, et al. v. Organ, 2 Wheaton 178, 4 L. Ed. 214.
Stewart v. Wyoming Cattle Ranche Co., 128 U. S. 383, 32 L. Ed. 439.
Tyler v. Savage, 143 U. S. 79, 36 L. Ed. 82.
Downey v. Finucane, 205 N. Y. 251, 98 N. E. 391, 40 L. R. A. (N. S.) 307.
MacDonald v. DeFremery, 142 Pac. 73 (Calif.).
MacDonald v. Roeth, 176 Pac. 38 (Calif.).
Crompton v. Beedle, 83 Vt. 287, 75 Atl. 331.

A.

Where positive representations are made, which are true when made, but pending the transaction conditions substantially change, to the knowledge of the party making the original representations, good faith and common honesty require that the party making such representations advise the other of the change which has taken place, and failure to do so constitutes actionable fraud.

Noble v. Renner, 177 Iowa 509, 159 N. W. 214.
Loewer v. Harris, 57 Fed. 368 (C. C. A. 2nd Cir.).

IV.

The rule of caveat emptor has no application to business transactions concerning the credit and financial standing of third persons. Even where one is under no obligation to supply information as to the credit standing of a third person, if he undertakes to do so, and leads the other party to believe that the credit of such third person is different from the facts within his knowledge, and fails to disclose information vitally affecting the credit of such third person, he is liable for fraud.

Foreman v. Dugan, 205 Iowa 929, 218 N. W. 912.
Noble v. Renner, 177 Iowa 509, 159 N. W. 214.
23 American Jurisprudence, Subject—Fraud and Deceit, paragraph 89, pg. 869.
Iasigi, et al. v. Brown, et al., 17 Howard 183, 15 L. Ed. 208.
Thermoid Rubber Company v. Bank of Greenwood, 1 Fed. (2d) 891 (C. C. A. 4th).

V.

The conclusion of the court, that the letter of May 14, 1930, stating

"We believe you have before you practically all the data covering this issue of bonds," and

"You observe, of course, that this city has no funded debt other than these improvement bonds,"

was of "trivial materiality," substitutes the judgment of the Circuit Court of Appeals for that of the jury, on the weight of the evidence.

VI.

That petitioner might have learned the true facts with respect to the location of the industrial mill properties at Longview, by independent investigation, or could have

learned of the trend of the Lumber Company's earnings from other sources, constitutes no defense to charges of fraud. The Iowa law (which governs this case) is that mere negligence of a defrauded vendee can never be pleaded as a defense to a charge of fraud by a vendor.

Ford v. Ott, 186 Iowa 820, 173 N. W. 121.
Creamer v. Stevens, 192 Iowa 920, 185 N. W. 581.
Gardner v. Trenary, 65 Iowa 646, 22 N. W. 912.

ARGUMENT.

I.

The so-called "hedge clause" of the offering circular,

> "All statements herein are official, or are based on information which we regard as reliable, and while we do not guarantee them, we, ourselves, have relied upon them in the purchase of this security,"

does not relieve respondent from liability for misrepresentations falsely or recklessly made.

The opinion of the court below concedes that the representations of the offering circular, Exhibit "B-1" and other exhibits, that the vast industrial plants of Long-Bell Lumber Company, Weyerhaeuser Timber Company, Longview Fibre Company, and others, were within the City of Longview, (and therefore subject to assessment in Improvement Districts 11 and 19) and that the City had a frontage of seven and one-quarter miles upon the Columbia River, were false and misleading. A reversal of the judgment of the District Court was directed, because, the Circuit Court of Appeals concluded that respondent had "expressly guarded itself against liability for possible inaccuracy by the 'hedge clause' in the prospectus, as set forth above," and, that, since the representations contained in the other exhibits were substantially the same as those contained in the offering circular, the "hedge clause" afforded a defense. This

ruling disregards well-established rules of law, and gives to the "hedge clause" of the offering circular, a wholly unwarranted effect.

The evidence disclosed that Kelley, respondent's salesman, first delivered to Hubbell, petitioner's vice president and treasurer, the offering circular, Exhibit "B-1". After reading this circular, Hubbell requested more information concerning the city, the properties, and the guarantor of the bonds. Kelley procured from respondent's Chicago office, Exhibits "B-24" to "B-34," inc., and delivered them to Hubbell. Kelley also stated that improvement districts Nos. 11 and 19 were practically co-extensive with the City of Longview, itself. The rotogravure booklet, Exhibit "B-25," bore on its back a map, showing the locations of the Long-Bell and Weyerhaeuser holdings, and the Columbia River. The limits of the city were not shown, but it definitely appeared therefrom that if the city had a frontage of seven and one-quarter miles upon the Columbia River, these large and extensive mill properties were within the city.

A few days after these exhibits were delivered, respondent's Chicago sales manager wrote the formal offering letter, which concluded with the assuring words that petitioner had already received "practically all the data covering this issue of bonds," and that the city had "no funded debt, other than these bonds."

A.

Respondent adopted the representations contained in the rotogravure magazine, the Chamber of Commerce booklets, and the magazine advertisements, by delivering them to petitioner in response to a request for more information than appeared in the offering circular.

First, it must be noted that the so-called "hedge clause" appeared only in the offering circular, Exhibit "B-1". There

was no qualification of any kind with respect to the other exhibits. They were delivered by respondent to Hubbell in response to a request for more information than the circular revealed. Respondent gave no indication that it desired to qualify, in any way, the information set forth in the other exhibits, and the recitals of the Wood letter of May 14 clearly indicated that respondent expected Hubbell to rely upon the information which had been furnished. By furnishing these additional exhibits, it seems quite clear that respondent should be held to have adopted the representations therein set forth as its own. It is conceded that these exhibits were delivered for the express purpose of inducing petitioner to purchase the bonds in substantial amounts.

It is well established by the authorities that clauses, by which one attempts to avoid the consequences of false and fraudulent representations, are not favorites of the law, and that notwithstanding such devices liability will be imposed for false and fraudulent representations, whether deliberately false, or recklessly made. The Iowa Supreme Court has laid down this rule in no uncertain terms. In *Jordan v. Nelson,* 178 N. W. 544, 10 A. L. R. 1464, the court held that the inclusion of a provision in a contract reciting that the purchasers of land had inspected the premises on their own behalf, and in making the purchase, and executing the contract, "they are not relying upon any representation made by the first party, and explicitly waive any claim on that account," did not relieve the vendor from responsibility for false and fraudulent representations. The Iowa Supreme Court in that case quoted with approval the language of the Court of Appeals and Errors of New York, in *Bridger v. Goldsmith,* 143 N. Y. 424, 38 N. E. 458, as follows:

> "Public policy and morality are both ignored if such an agreement can be given effect in a court of justice. The maxim that fraud vitiates every transaction would

> no longer be the rule, but the exception. A mere device of the guilty party to a contract, intended to shield himself from the results of his own fraud practiced upon the other party, cannot well be elevated to the dignity and importance of an equitable estoppel."

The rule as to stipulations in a written agreement, which attempt to nullify the effect of fraudulent representations, is well stated in 23 American Jurisprudence, pg. 778, Subject—Fraud and Deceit, paragraph 26, as follows:

> "A provision in a writing that no representations were made to procure the contract, that neither party shall be bound by any representations not contained therein, or that the representee does not rely on representations by the other party, and expressly waives any claim on account thereof, in most jurisdictions does not preclude a charge of fraud, based on oral representations, or proof of what representations were made."

Qualifying statements similar to the "hedge clause" contained in Exhibit "B-1," are sometimes placed upon legal opinions and auditor's reports. In the late case of *Ultramares Corporation v. Touche, Niven & Co.*, 255 N. Y. 170, 174 N. E. 441, 74 A. L. R. 1139, the New York Court of Appeals and Errors held that a statement of this character, placed upon an audit, made by a firm of certified public accountants, would not relieve the firm from responsibility for false or reckless representations as to the scope of the audit.

The holding of the court below, that the "hedge clause" constituted a defense to the misrepresentations contained in the exhibits, other than the offering circular, itself, cites no authority in support of the pronouncement. None was cited in the brief of respondent in the lower court, and we are confident that no such authority exists.

Respondent well knew that the information which it was furnishing was sought by petitioner for the very purpose of determining whether the purchase of a large block of these bonds, as an investment of its policy reserves, was

desirable. The opinion of the court below, that the "hedge clause" of the offering circular afforded a defense to misrepresentations contained in the exhibits, other than the offering circular itself, is quite clearly untenable, and cannot be sustained upon principle or authority.

B.

Since respondent purchased the local improvement bonds solely in reliance upon the Lumber Company's guarantee, and would not have dealt in them at all, except for the guarantee, the statement of the "hedge clause" that respondent had relied upon the facts stated in the circular in the purchase of the securities, was essentially misleading, and constituted a false and fraudulent representation.

The offering circular, Exhibit "B-1," contained the unequivocal statement that "We, ourselves, have relied upon (the facts set forth) in the purchase of this security." R. E. Simond, respondent's vice president in charge of purchases of municipal securities, testified that respondent gave no consideration whatever to the security afforded by the special assessments upon Longview real estate, did not consider the bonds proper for sale to their customers, and would have had nothing to do with the bonds, except for the guarantee of the Lumber Company. (R. 79, 80 and 81) It thus definitely appeared, by this admission of an executive officer of respondent, that the statement of the "hedge clause" that respondent had relied upon the location of the Long-Bell, Weyerhaeuser and Longview Fibre mill properties, the frontage of the City upon the Columbia River, and upon Longview, itself, as an important commercial center, was untrue and misleading.

The "hedge clause," itself, would lead any prospective purchaser of the local improvement bonds to believe that Halsey, Stuart regarded the bonds as worthy investments

on their merits, independent of the Long-Bell guarantee. In this respect, the "hedge clause" itself was a deceptive statement, for respondent did not rely upon the facts set forth in the offering circular in the purchase of the securities. Under such circumstances, it is indeed strange logic to hold, as did the Circuit Court of Appeals, that respondent is relieved from responsibility by the presence of this clause in the offering circular. The "hedge clause," instead of constituting a defense to petitioner's claim, offers affirmative evidence of reckless misstatement by respondent.

C.

Notwithstanding the presence of the "hedge clause," a jury question was presented as to respondent's liability for fraud in making reckless statements and representations, without knowledge as to their truth or falsity.

Respondent well knew that petitioner would rely upon the information contained in the exhibits, other than the offering circular, in purchasing the bonds, and it certainly expected and intended that petitioner would act upon the information therein contained.

The Iowa law, like that of most states, is that under such circumstances, even though one expressly disclaims personal knowledge of a matter, if he attempts to speak concerning the facts, he is liable for false and fraudulent representations, recklessly made, without knowledge as to their truth or falsity. In *Hanson v. Kline*, 136 Iowa 101, 113 N. W. 504, it appeared that plaintiff was the owner of a hardware stock which he desired to exchange for a well-located farm. He was approached by one J. E. Gray, a real estate dealer, who offered a Nebraska farm, in exchange, which was represented as good, level land, in a good neighborhood, with fifty acres under plow, and an additional fifty acres fenced, improved with a small house, a barn,

a well and a windmill. An abstract of title was furnished plaintiff, who took it to W. E. Gray, a lawyer, and the father of J. E. Gray. W. E. Gray told plaintiff that he had never seen the land in question, but that the abstract disclosed that the land had once been mortgaged for $2,000, had been sold some years before for $1,200, and that the land covered by the abstract was a good piece of land, and that plaintiff could rely on the statements made by J. E. Gray as to its quality. W. E. Gray did not act as the attorney for plaintiff, and no fiduciary relationship was present. The evidence showed that the land was wholly unimproved, and of little value, although the abstract of title contained the entries pointed out by W. E. Gray. The trial court submitted the case to the jury, which found against both defendants. The Iowa Supreme Court held that the record warranted submission of the case to the jury, as to the fraud of W. E. Gray, and in the course of its opinion the court said:

> "It is true enough that one who makes a representation respecting existing conditions, and in doing so expressly states that he does not speak from personal knowledge, but is merely repeating information received from others, and he honestly repeats such information, believing it to be true, he cannot be guilty of a fraud. All the authorities are to this effect. But, if he falsely states that he has information when he has none, or if he knows his information is false, or if he intentionally misstates his information, and by the representation he makes he induces another to act to his damage, he may be held guilty of a fraud."

The case of *Davis v. Central Land Co.*, 162 Iowa 269, 143 N. W. 1073, involved a charge of fraud in making representations as to the location of a boundary line between adjoining properties. Plaintiff testified that defendants pointed out a certain line as the boundary between the property purchased and that adjoining it. Defendants de-

nied knowledge of the location of the true boundary line, and denied making the representation. The Iowa Supreme Court said:

> "The fraud alleged consisted in the reckless assertion as true that of which the party knew nothing which was definitely ascertainable, and in deceiving the other party thereby. The principle is well established by the authorities, and the evidence was such as to carry the issue of fraud to the jury."

In the later case of *Haigh v. White Way Laundry Co.*, 164 Iowa 143, 145 N. W. 473, the court considered the sufficiency of the allegations of a petition which charged that a personal injury release had been procured by fraud of the defendant. The Iowa Supreme Court there said:

> "Where a false representation is relied upon as constituting fraud, it must be shown to have been knowingly made, with intent to mislead, or that the party made the statement as true, with no reasonable ground to believe it to be true, for the purpose of inducing the other to act. * * * So, in this case, it is immaterial whether or not the company, by its agent, knew or did not know whether the tendons of plaintiff's hand were in fact injured, for the reason that the defendant, through its agent, asserted it as a fact (and it was a material fact) for the purpose of inducing the plaintiff to believe it was true, and that her injuries were trifling; that she would soon recover. * * * The fraud consists in asserting that to be true which was not true; which the defendant did not know to be true; made with the wrongful purpose and resulting in injury to plaintiff."

In the late case of *Ultramares Corporation v. Touche, Niven & Co.*, 255 N. Y. 170, 174 N. E. 441, 74 A. L. R. 1139, defendants, a firm of certified public accountants, made an exhaustive audit of the affairs of a corporation, and submitted a certificate that their report was

"In accordance with the books, and with the information and explanations given us, and that the balance sheet and financial statement presents a true and correct view of the financial condition of Stern & Co."

The evidence disclosed that $700,000 of accounts receivable listed in the audit and balance sheet were wholly fictitious, and that no check had been made to ascertain whether such accounts were supported by ledger entries, or invoices, for goods sold. The trial court directed a verdict for the defendants, but the New York Court of Appeals and Errors, in an opinion delivered by the late Mr. Justice Cardozo, of this court, reversed the trial court, and held that a jury question was presented as to the fraud of the accountants. The court said

"We conclude, to sum up the situation, that in certifying to the correspondence between balance sheet and accounts the defendants made a statement as true to their own knowledge, when they had, as a jury might find, no knowledge on the subject. If that is so, they may also be found to have acted without information leading to a sincere or genuine belief when they certified to an opinion that the balance sheet faithfully reflected the condition of the business."

No officer or employe of Long-Bell Lumber Company appears to have ever informed respondent, or its officers, that the industrial plants were within the corporate limits of Longview. No executive officer of Halsey, Stuart testified that he actually believed that the extensive mill properties described in the literature concerning the issue were in fact, within the city, and subject to assessment in the city-wide improvement districts. If respondent knew nothing, concerning the location of the mill properties with reference to the corporate limits, or the frontage of the city upon the Columbia River, the statements of the offering circular, and the other literature, were reckless in the extreme, and were such as to bring this case squarely within

the rule of the Iowa decisions from which we have quoted. This phase of the matter seems to have been entirely overlooked in the opinion of the Circuit Court of Appeals.

In the case at bar, respondent well knew that petitioner was considering the purchase of large blocks of the Longview improvement bonds as an investment of its policy reserves. Respondent well knew that petitioner's officers were seeking authoritative information concerning the City of Longview, the properties subject to assessment, and the guarantor corporation. That the information contained in the various pamphlets and circulars submitted, was furnished for the express purpose of inducing the purchase of the bonds, no one denies. Under these circumstances, we submit that even though it be conceded that respondent had no actual knowledge concerning the true location of the Long-Bell, Weyerhaeuser and Longview Fibre Company mill properties, or the frontage of Longview upon the Columbia River, the question of its liability for recklessly making false and misleading statements, was a question for determination by a jury.

II.

The Seventh Circuit Court of Appeals overlooked, misconstrued or disregarded the evidence disclosed by the record, which justified a finding by the jury that respondent well knew the falsity of the statements in the offering circular, and other exhibits, as to the frontage of the city upon the Columbia River, and the location of the Long-Bell, Weyerhaeuser and Longview Fibre plants.

The Circuit Court of Appeals for the Seventh Circuit held that the statements of the offering circular, and the other exhibits, as to the frontage of Longview upon the Columbia River and as to the locations of the mill properties, were false and misleading, but that petitioner's proof

was insufficient to establish that respondent knew the true facts, and that under these circumstances, the so-called "hedge clause" operated to relieve respondent from legal liability. This conclusion could only have been arrived at by overlooking, misconstruing, or disregarding much record testimony, which amply justified a jury in concluding that respondent well knew the true facts as to the frontage of the city upon the Columbia River, and the location of the industrial plants. In fact, a reading of the record conclusively demonstrates that the Circuit Court of Appeals arrived at its conclusion only by substituting its own judgment for that of the jury below, as to the weight to be accorded the undisputed evidence.

For seven or eight years before the purchase of the bonds in question, an unusually close business relationship had existed between Halsey, Stuart & Co. and the Lumber Company. First, Halsey, Stuart & Co. purchased from the Lumber Company, and resold to its customers, three issues of Long-Bell Lumber Company First Mortgage Bonds, amounting in the aggregate to substantially more than $25,000,000. These bonds were secured by first mortgages on tracts of standing timber, and by liens upon various mill properties of the Long-Bell Company, the most important of which were the vast manufacturing properties just outside the limits of Longview. In addition, in 1925, Halsey, Stuart purchased from Long-Bell, and resold to its customers, $3,260,000 of diking bonds, and $3,250,000 of Collateral Gold Notes, secured by the deposit of all of the outstanding bonds of the Lumber Company's subsidiary railroad, as well as several issues of improvement district bonds, amounting in the aggregate to more than $3,000,000, (the issue involved in this litigation).

In connection with the first mortgage financing, respondent sent C. T. MacNeille and F. K. Shrader, its vice presi-

dents, to Longview. S. M. Morris, one of the vice presidents of the Lumber Company, testified, at R. 214,

> "MacNeille was out here two or three times during the early stages of construction. I think he was here in 1922 for the first time. We had attained some degree of development, however, when he was here, for I think he was here after 1924."

F. K. Shrader, another vice president of respondent, testified, at R. 153:

> "I had something to do with issues of bonds known as Series A, B, and C First Mortgage Bonds of the Long-Bell Lumber Company, and I think in connection with that work I went to Longview twice. The first trip I made there, it was practically empty—just the mill site, and a temporary office. The second and last trip was about three years after that. The town was pretty well built up, and the hotel was operating, and it was quite a community."

Both Shrader and MacNeille were witnesses, and testified at considerable length in this case, but it is extremely significant that neither of them denied knowledge as to the location of the corporate limits of the City of Longview, and the mill properties.

Walter I. Sleep, another vice president of respondent, was in charge of the purchases of municipal issues. Sleep made a trip to Longview in May, 1925, and while there, entered into a contract with the Lumber Company for the purchase of the first block of local improvement district bonds acquired by respondent. (See plaintiff's Exhibit "P-34," R. 513, and R. 72) Sleep also acted for respondent in acquiring the diking district bonds. (R. 77) Sleep died before the trial.

The jury then had before it definite evidence that three different vice presidents of Halsey, Stuart & Co. made at least five or six trips to Longview for the express purpose

of investigating the Lumber Company, and the security which it was offering for the various issues of bonds which respondent purchased and offered to its customers. The mill properties were all subject to the lien of the diking district bonds, but none of them were assessed in the local improvement districts. (R. 264) The mill properties of the Long-Bell Lumber Company constituted a very substantial part of the security for the Lumber Company's first mortgage bond issues. The Longview local improvement bonds were handled subsequently. The opinion of the court points out that when petitioner became suspicious and made inquiries concerning the city, and the location of the mill properties, it was able to find out the facts at once, and "there is nothing to suggest why it could not have found them with equal facility before it purchased the bonds." (R. 671)

The record discloses that James H. Windsor, petitioner's representative, in 1931 did learn the true facts as to the location of the mill properties by a one day's visit to Longview. The record discloses that three different vice presidents of respondent made repeated trips to Longview for the very purpose of investigating these various bond issues, yet the Circuit Court of Appeals ruled that petitioner had failed in its proof, because there was no showing that respondent learned facts, which were so open and obvious that petitioner could easily have discovered them, and was chargeable with fault for failure so to do before it purchased the bonds. Apparently the Circuit Court of Appeals saw fit to apply one rule to Halsey, Stuart & Co. and another to the Equitable Life Insurance Company of Iowa.

With these facts before it, was not a jury justified in assuming that MacNeille, Schrader and Sleep made some reasonable degree of investigation concerning issues of bonds which totalled more than $30,000,000 in amount? Would it not be doing violence to both reason and com-

mon sense to assume that these financial experts, investigating issues of bonds which respondent was purchasing and re-offering to its customers as desirable investments, had failed to learn that the Lumber Company's vast mills, which constituted a very vital part of the security for the first mortgage bonds, were outside the limits of Longview, and, therefore, not subject to municipal taxation in the Lumber Company's grandiose scheme of urban development? The jury had a right to take into account the fact that Sleep, respondent's vice president, had traveled from Chicago to Longview for the express purpose of consummating the purchase of the first block of Longview local improvement bonds amounting to one and one-quarter millions of dollars. Is it reasonable to suppose that he would consummate such a transaction without examining a map of the city which was issuing the bonds? Furthermore, vice president Morris, in charge of the Lumber Company's real estate development at Longview, testified that he did not refuse Sleep any information, and that he had never furnished respondent any information indicating that the lumber mills or the Longview Fibre plant were within the City of Longview, or that the City had a frontage of seven and one-quarter miles on the Columbia. (R. 212, 213)

But even these facts do not fully disclose the extent of Halsey, Stuart's actual knowledge of the local situation at Longview. In 1925, through correspondence with Long-Bell's lawyer, located there, R. E. Simond, assistant to vice president Sleep, and his successor, learned the assessed valuations of all the real estate embraced within local improvement districts 1 to 8, inclusive. (R. 80) In 1927, Simond, by correspondence with the Lumber Company's tax agent, Alex Hay, learned that the total assessed valuation of all the property included within the limits of the city, was $3,439,918. (R. 80) The information furnished by the Lumber Company's Longview counsel, disclosed that the

assessed valuation of the property in improvement district No. 1, was $45,220, and that Halsey, Stuart purchased and sold to its customers, $426,815 of improvement bonds of that district.

It is significant, indeed, that no officer of respondent testified that he was informed, or even supposed, that the mill properties were within the city limits of Longview. Vice president Simond says that he did not know what the true facts were, but does not claim that he ever believed that the mill properties were subject to assessment in the city-wide improvement districts. The whole tenor of his evidence is directly contrary to any such belief, for in response to requests from various branch offices for specific information concerning the local improvement bonds, Simond, by his own admission, is shown to have repeatedly informed respondent's salesmen and branch managers, that the valuations of properties embraced within the various districts would probably prove disappointing, and that respondent had relied solely upon the Lumber Company's guarantee in purchasing the bonds. (See R. 79, 80 and 81)

It was not necessary for petitioner, in order to render the question of respondent's knowledge of the location of the limits of the city, and the mill properties, a jury question, to establish by admissions of the executive officers of respondent that they were aware of the location of the industrial plants, or the frontage of the city upon the Columbia River. Neither was petitioner required to establish such fact beyond a reasonable doubt. It was sufficient if petitioner introduced proof from which a jury could properly infer that respondent did have knowledge of the true facts. The courts have long recognized that it is seldom indeed that defendants in fraud cases will admit their knowledge of the falsity of material representations. Guilty knowledge is usually shown, just as in the case at bar, by showing facts and circumstances from which the jury may properly in-

fer that the defendants did possess such knowledge. In view of the fact that the record contains no denial of actual knowledge by Shrader and MacNeille, we submit, that the evidence was sufficient to justify a finding by the jury that respondent did possess knowledge of the true facts. The jury was justified in considering the facility with which the facts became known to petitioner when investigation was made, and might properly conclude that respondent's executive officers could not well have escaped learning the true facts, with reference to the location of the mill properties, and the frontage of the city upon the Columbia River, in their repeated trips to the Longview community. It seems to us very clear that the conclusion of the Circuit Court of Appeals that the evidence was insufficient to show knowledge of the falsity of the statements of the offering circular, usurps the province of the jury, and substitutes the judgment of that court for that of the jury upon the weight of the evidence.

III.

Respondent was not merely silent with respect to the financial condition of the Lumber Company, but indulged in half-truths, made affirmative statements and representations which were misleading in character, and by suppressing the true facts, created a false and fraudulent impression as to the financial stability of the Lumber Company. The conclusion of the Circuit Court of Appeals, that respondent was under no duty to disclose the true facts, is contrary to established rules of law.

After reading the offering circular, Hubbell asked Kelley for additional information concerning the financial situation of the Lumber Company, guarantor of the bonds. In response to this request, Kelley delivered to Hubbell Exhibit "B-34," which was the January 1, 1930 financial report and

balance sheet of the Long-Bell Lumber Company, and its subsidiaries. (R. 467-478) The balance sheet indicated a relatively sound financial condition. Total assets were shown as $116,183,706, and current assets, comprising principally cash and inventories of lumber, were $15,831,180. Current liabilities, including bank loans of $4,000,000, totalled only $7,795,940. Capital and surplus, as disclosed by the balance sheet, were in excess of $59,000,000.

Respondent's officers well knew that this balance sheet presented a misleading picture of the financial condition of the Lumber Company and its subsidiaries. Respondent's officers had been importuned on many occasions between January 1, 1930, and May 15, 1930, to do additional financing for the Lumber Company, and the record demonstrates that in the latter part of March and early April, the Long-Bell executives asked respondent to market a bond issue for $150,000, to be secured by pledge of the assets of the Longview Daily News, a daily newspaper at Longview, owned or controlled by the Lumber Company, or its executives. It was also suggested that respondent underwrite an issue of notes, to be secured by the pledge of payments coming due under installment sales contracts for standing timber, which the Lumber Company had sold to others. (R. 92) On April 14, 1930, respondent's president, H. L. Stuart, wrote the Chairman of the Lumber Company that Long-Bell credit was selling in the market on such a basis as to make it difficult, if not too costly, to undertake a sale of such notes. (R. 93) On May 5, 1930, Stuart had suggested to Long that he approach two New York banking houses, for the necessary financing. In that letter Stuart recognized that the securities of the Lumber Company would not be immediately salable, for he suggested that the New York banking houses might be induced to make loans where the securities could not be immediately marketed, but that they would probably demand a large commission or bonus, (R. 93, 94)

On May 15, 1930, Long advised Stuart that he had been unable to secure the desired financing in New York. (R. 94, 95) On May 15, 1930, Long wrote Stuart of the need to strengthen the Lumber Company's "current position," stating also that he found "commercial bankers in a generally critical and sensitive attitude of mind."

This letter was written after the May 5 meeting of the executives of the Lumber Company with Mr. Place, of the Chase National Bank of New York. At this meeting Mr. Place notified the Lumber Company that its line of credit would not be renewed, unless its current financial position were strengthened, and suggested that this be effected by creating a new subsidiary corporation, which would own all liquid assets of the Lumber Company, and conduct the borrowing operations with banks. (R. 129, 130). This demand, or suggestion, of the Chase National Bank, was discussed with H. L. Stuart, by the Lumber Company officers, in the spring, or summer, of 1930. (R. 130, 148) Stuart, at that time, commented that if the Lumber Company found that it could carry commercial bank loans only by having a separate subsidiary, that was probably the thing to do. On June 30, 1930, Stuart wrote Long a letter, which concluded:

> "I am sure that Mr. Andrews (General Counsel for the Lumber Company) gave you my message, which was to ask you to kindly let me know the outcome of your next talk with the Chase Bank." (R. 442, 105)

We have then this situation disclosed by the record: Respondent had purchased the Longview improvement bonds in 1925, 1926 and 1927, relying solely upon the strength of the guarantee of payment by the Lumber Company. It is conceded that it did not regard the bonds as of worthy investment caliber, except for the guarantee. In May, 1930, it is obvious that respondent's officers fully realized that

the guarantee of the Lumber Company was badly impaired, and of extremely questionable value. It was under these circumstances, that the January 1, 1930, financial statement and balance sheet was furnished to Hubbell, and the letter of May 14, 1930, assuring Hubbell that he had received "practically all the data covering the issue," was written. If there be any question in this record as to respondent's knowledge of the true financial condition of the Lumber Company at any time, it is abundantly established that respondent did have full knowledge of the demands of the commercial banks sometime prior to June 30, 1930, for on that date, Stuart wrote Long asking that he be advised of the result of the next conference of the Lumber Company executives with "the Chase Bank." The Lumber Company appears to have had no other business with the Chase Bank.

On June 4, 1930, after the purchase of the first block of $100,000 of Longview bonds by petitioner, Wood, respondent's Chicago sales manager, wrote Hubbell suggesting that petitioner acquire another $100,000 of the bonds. In this letter he referred to the fact that the Lumber Company was retiring its first mortgage bonds in substantial amounts, from the proceeds of the sale of capital assets, "not necessary to the successful operation of this company." (R. 483)

The Circuit Court of Appeals for the Seventh Circuit disposed of the charges of fraud, based upon the misrepresentations as to the financial condition of the Lumber Company, as involving nothing more than a failure to disclose facts. That court said that there was no duty upon respondent to disclose such facts, and hence, no actionable fraud was shown. In support of its pronouncement, the Circuit Court of Appeals quotes with approval, the text of 23 American Jurisprudence, Fraud and Deceit, paragraph 93, and the Iowa case of *Foreman v. Dugan*, 205 Iowa 929, 218 N. W. 912. The Appeals Court, however, completely overlooked

the fact that respondent was not merely silent with respect to the financial situation of the Lumber Company, but made active representations concerning the financial condition of that company, indulged in half truths, which were essentially misleading, and by assuring petitioner that it had received "practically all the data covering the issue," forestalled independent investigation by petitioner on its own account.

In 23 American Jurisprudence, Fraud and Deceit, which was cited by the Appeals Court in support of its conclusion, the text writer states the rule as follows:

> Par. 93. "Where, in addition to a party's silence, there is any statement, word or act on his part which tends affirmatively to a suppression of the truth, to a covering up or disguising of the truth, or to a withdrawal or distraction of a party's attention from the real facts; then the line is overstepped."

Paragraph 94 of the same work, reads as follows:

> "Very little in addition to non-disclosure of material facts is required to prevent the application of the general rule which renders mere silence non-actionable and to make a party guilty of fraud. For instance, statements ordinarily regarded as expressions of opinion may be considered as sufficient where calculated to mislead and to prevent an examination of the property involved, or to throw the owner off his guard in order to gain the property from him. Indeed, it has been said that the least degree of misrepresentation constitutes very potent evidence of fraud, under such circumstances, and that a single word, a nod, a wink, a shake of the head, or a smile intended to induce the belief in the existence of a non-existing fact, may be sufficient."

Counsel for both parties concede that this case is governed by the Iowa law. The Iowa rule is that fraud is committed whenever one party to a transaction, by half-truths, creates a false and fraudulent impression in the mind of

the other, as to the true facts, and thereby induces him to act.

In *Noble v. Renner*, 177 Iowa 509, 159 N. W. 214, the Iowa court had before it a suit for damages, based on fraud in the sale of a farm immediately adjacent to the east bank of the Missouri River in western Iowa. This farm was subject to the action of the Missouri River, which at flood stage, frequently cuts away large amounts of land by changes in its course. Plaintiff resided in eastern Iowa, and made a trip to the farm on April 17, 1912, and then learned that the farm was subject to the action of the river. He returned to his home in eastern Iowa, and on May 2, 1912, a contract was executed for an exchange of properties. In the meantime, a severe flood had occurred, and the river had changed its course, so as to cut off a substantial portion of the acreage comprised in the farm, and of this fact defendant was advised by a telegram from his agent. It was contended that plaintiff had made his own inspection of the farm, that the parties were dealing at arm's length, and that no obligation was imposed on defendant to advise plaintiff of the action of the stream. The Iowa Supreme Court rejected this contention as untenable, and in the course of its opinion said:

> "It is the theory of appellant that he owed no duty to speak, because this is not a case of the river's cutting, but of continuing to cut as it did when plaintiff saw the land, that both had equal opportunity to learn of this change, and that while in the authorities presented by appellee there was some new element of which one party had knowledge, and which he concealed from the other, in this case there was no element which did not exist from the beginning. He illustrates, one might as well say, there was an actionable misrepresentation because a horse was represented as perfectly sound when inspection made before buying showed the horse had lost a leg.

Is there not more here than a mere case of silence which amounts to a failure to state that which both knew or had equal means of knowing? Is there not affirmative concealment intended to lead another to his injury? Is not appellant proceeding on the lines that he might tenably use if he, too, had been ignorant of what, of necessity, occurred since plaintiff inspected the land? If neither had been advised, and the change had occurred since the inspection, there would be room for saying that defendant had no duty to make sure whether conditions had not changed, and advise plaintiff. But defendant knew not only that plaintiff had made inspection, but that he would naturally rely upon what he found then, and knew that conditions had changed for the worse since then, and that plaintiff did not know it. It is undenied, too, that defendant was not content with mere silence. It appears that on May 2nd, before the contract was signed, defendant told Noble there was no cutting there any more; that there would be a little sluffing of the bank in the spring when the frost was going out. This can have been intended for no other purpose than to strengthen Noble in the belief that conditions remained substantially as they were when he saw the land, and surely tended to do so. And on the morning of May 2nd defendant told plaintiff he would guarantee there were 114 acres, which was again calculated to keep plaintiff in the same misapprehension."

The Iowa rule is also illustrated by the case of *Foreman v. Dugan*, 205 Iowa 929. That case involved a sale of farm lands which were subject to overflow, and lay adjacent to the Des Moines River. There was a drainage ditch which ran through the farm, which plaintiff observed. Plaintiff asked if the farm overflowed, and the defendant replied that it did from ice gorges in the river, which sometimes backed up the water. The Iowa court held that under the particular facts there disclosed, no actionable fraud was shown because the situation was open and obvious to both parties, and each had means of knowledge concerning the true situation. The Iowa court stated the rule in these words:

"Upon this entire record, we are disposed to acquiesce in the conclusion of the trial court that there was not sufficient evidence of false and fraudulent representations on the part of the vendor to carry the case to the jury, or to support a finding of fraud and false representations. It is undoubtedly a correct rule of law that one who is called upon to speak in regard to a subject-matter may be guilty of false representation by evasion, or by speaking half the truth, or failing to speak fully and truthfully where a duty rests upon him to so speak. In other words, one may be guilty, under certain circumstances, of false representations in failing to disclose facts within his knowledge. Silence on a subject may constitute, under certain circumstances, a false representation, quite as much as spoken words. *Howard v. McMillen*, 101 Iowa 453; *Noble v. Runner*, 177 Iowa 509. But, on the other hand, in determining whether there are actionable false and fraudulent representations, consideration must be given to the situation of the parties, the matters with which they are dealing, and the subject-matter in hand. We have here a situation where the topography of the farm and its physical features were perfectly apparent to the appellant, who made a personal examination of the same at the time. He could see the lay of the land. The adjacent river, the near-by hills, and the drainage ditch, were all apparent, visible, and known to him. The minds of the parties, under all of the circumstances surrounding them at the time, were obviously directed to the question of the overflowing of the land from the adjacent river, next to which the lower land of the farm lay. We must construe the representations in the light of the circumstances under which the parties were placed at the time."

The Circuit Court of Appeals cites this decision of the Iowa Supreme Court in support of its conclusion that respondent here was guilty of no fraud with respect to the financial condition of the Lumber Company. But the Circuit Court of Appeals failed to take into account the distinction between the character of the property, with which the Iowa Supreme Court was dealing, and that involved in

the case at bar. The financial situation of the Lumber Company was well known to respondent's officers. Such condition was not something as to which the parties possessed equal knowledge, or means of knowledge. As we shall point out in another division of this brief, the rule of *caveat emptor* has no application to transactions involving the credit, or financial standing, of a third person. There are numerous authorities from this court which demonstrate the wholly untenable character of the rule applied by the Seventh Circuit Court of Appeals.

This is well illustrated by the case of *Tyler v. Savage*, 143 U. S. 79, 36 L. Ed. 82. Mrs. Savage, a woman of considerable means, had a son whom she desired to place in an established business. Tyler was president of a corporation called the Virginia Oil Company, with which the son sought employment. Mrs. Savage suggested that she would be willing to make a substantial loan to the corporation, if her son were given a permanent position. Tyler wrote her, stating that the capital of the company was $18,300; that the last dividend declared was a seven per cent, semi-annual dividend; that the fiscal year ended on June 1; that the company had flattering prospects; that its products were widely distributed, and by adding moderately to its capital, its sales could probably be doubled, with but slight increase in overhead; that thirty shares had recently been purchased at par by a gentleman from New York. Plaintiff invested $10,000 in the stock of the corporation. She later learned that the corporation had paid no dividends for a period of more than one year before the letter was written; that it was largely indebted to Tyler, and was, in fact, in precarious financial condition. It was contended that defendant was guilty of no fraud. This court in disposing of the contention, said:

"Ty er's letter to the plaintiff of April 10, 1884, in saying 'The last dividend that was declared was a 7 per cent semi-annual. The fiscal year ends on the first of June,'—was calculated naturally to produce the impression upon the plaintiff's mind that the last dividend was declared on the 1st of June, 1883, whereas the last dividend was June 1, 1882. It must be inferred that, if the plaintiff had been informed that no dividend had been declared since June 1, 1882, she would not have subscribed for the stock. This suppression of a material fact, which Tyler was bound in good faith to disclose, was equivalent to a false representation. *Stewart v. Wyoming Cattle Ranche Co.*, 128 U. S. 383, 388."

The case of *Stewart v. Wyoming Cattle Ranche Co.*, 128 U. S. 383, 388, 32 L. Ed. 439, likewise illustrates the rule which should be here applied. There defendant owned an extensive ranch property in Wyoming, upon which he executed an option of purchase by plaintiff, a foreign corporation, at a price of $400,000. The option provided for an inspection of the premises by an agent of plaintiff's selection. Plaintiff's agent made a trip to the property, and went over it. Defendant told him that more than 2,800 head of calves had been branded within the year; that the herd consisted of approximately 15,000 head; that he did not want it generally known in the community that the ranch property was to be sold, and that the agent could rely upon his statements. The herd had, in fact, been ravaged by disease, and the number of calves surviving was substantially less than represented. The trial court instructed the jury that defendant was under no obligation to make any statements concerning the herd and the ranch property, but if he did so, it was his duty to state the full truth concerning the matters as to which he spoke, and that if plaintiff's agent was dissuaded from following up sources of information, or if defendant concealed facts within his knowledge, or led plaintiff's agent to believe that they were otherwise

than as known to defendant, then defendant was liable for fraud. This court approved the instruction, saying:

> "So the clear meaning of the sixteenth instruction is that the jury were not authorized to find material misrepresentations by the defendant, unless he purposely kept silent as to material facts which it was his duty to disclose, or by language or acts purposely misled the plaintiff's agent about the number of cattle in the herd, or the number of calves branded, or by words or silence, knowingly misled or deceived him, or knowingly permitted him to be misled or deceived in regard to such material facts, and in one of these ways purposely produced a false impression upon his mind."

The rule is also illustrated by the case of *McDonald v. DeFremery*, 142 Pac. 73, from the Supreme Court of California, and see the same case on a second appeal—*McDonald v. Roeth*, 176 Pac. 38. That case involved a charge of fraud in the sale of bank stock. Plaintiff was shown a summary of the bank's report to the Comptroller of the Currency, which contained a statement of the amounts at which the bank's loans, discounts, bonds and securities were carried on the books of the bank, but did not disclose the bad debts, suspended and over due paper, or other similar items. The full report was in the possession of the defendants, as well as a detailed audit of the affairs of the bank, which showed that its capital stock was badly impaired, because of the frozen, or uncollectible, nature of many of the loans and discounts. The trial court found for the defendants, making specific findings. The Supreme Court of California said, in reversing the judgment of the trial court:

> "If the statements and representations which were made were, in fact, false, it is immaterial that defendants believed that the bank would eventually come through its difficulties, or that the defendants did not intend to cheat the plaintiff. (Citing cases) The reliance which plaintiff was entitled to place upon this report then, was a reliance that the report was a true

statement of the bank's financial condition, and not as the court found, a mere transcript of the condition of the bank as shown by its books. Moreover, deceit may be negative as well as affirmative. It may consist in suppression of that which it is one's duty to declare, as well as by the declaration of that which is false. If it be so that defendants did not believe, and could not have believed, that the report contained a true statement of the bank's financial condition, their failure to disclose this fact to plaintiff in handing him the report forms the foundation of an action for deceit under the principle above stated."

One of the leading cases dealing with fraud in the sale of corporate securities is that of *Downey v. Finucane*, 205 N. Y. 251, 98 N. E. 391, 40 L. R. A. (N. S.) 307. Defendants there were engaged in selling securities of a corporation known as the United States Independent Telephone Company. A circular was issued which stated that the company owned a franchise in the City of New York, for the operation of a telephone system, "acquired under the advice of eminent counsel, under which it is its purpose to begin, as soon as practicable, * * * the construction of an independent telephone system." The circular also stated that $17,000,000 of bonds were to be issued pursuant to contracts already made and binding upon the company, as the result of which it would have $5,000,000 in its treasury. The evidence disclosed that the only franchise owned by the corporation was one for the operation of a burglar alarm system in the lower part of Manhattan, and that this franchise could not be converted into a telephone franchise, except by securing additional permits from public authorities, which had not been done. The only contracts entered into by the company were options given to certain of the promoters to purchase bonds, which, if exercised, would provide the company with $5,000,000 in cash. It was contended that the issuing circular contained no positively false statements, and, therefore, no actionable fraud was shown. The New York Court

of Appeals and Errors found the contention wholly without merit. That court said:

> "Speaking of an equivocal prospectus which was condemned as fraudulent by the House of Lords in *Aaron's Reef v. Twist L. R.* (1896) App. Cas. 273, 285, Lord Halsbury calls the language 'ambidextrous'; and this expression aptly characterizes that in the present case. In the case cited it was argued, as it is suggested here, that there was no specific allegation of fact which is proved to be false; but the Lord Chancellor protested against this being regarded as the true test, and declared that the question was whether taking the whole thing together was there a false representation. 'I do not care by what means it is conveyed—by what trick or device or ambiguous language. All those are expedients by which fraudulent people seem to think they can escape from the real substance of the transaction. If by a number of statements you intentionally give a false impression and induce a person to act upon it, it is not the less false, although, if one takes each statement by itself, there may be a difficulty in showing that any specific statement is untrue.' The general reader would almost inevitably infer from this assertion in the prospectus that the United States Independent Telephone Company was a party to contracts with solvent purchasers which would enable it within a reasonable time to realize $5,000,000 in cash, and the proof shows that nothing could have been further from the truth."

We might multiply the citation of authorities establishing this sound and just rule of law, but we think the foregoing illustrate the principle which should be applied to the case at bar. Additional cases establishing the rule are cited in the Summary of Argument. It is to be noted that in the cited cases, no fiduciary relationship existed between the parties. They were merely vendors and vendees of various types of property.

Respondent, in the case at bar, was not merely silent with respect to the Lumber Company, and its guarantee. Respondent furnished to petitioner a balance sheet and finan-

cial statement of the Lumber Company as of January 1, 1930, with full knowledge that the financial condition thus disclosed had materially changed. On May 14, 1930, respondent's Chicago sales manager, Wood, wrote that petitioner had been furnished "practically all the data covering this issue of bonds." This statement was clearly calculated to lead petitioner to believe that it had received all the material information possessed by respondent as to the issue, and to persuade petitioner to forego an additional independent investigation on its own account.

After the purchase of the first block of the Longview bonds by petitioner, respondent's sales manager again wrote Hubbell representing that trunk line railroads, operating in the Pacific Northwest, might purchase the Lumber Company's railroad subsidiary. In this letter additional statements appeared which indicated respondent's belief in the financial strength of the Lumber Company, since it was retiring a large amount of its mortgage bond indebtedness.

We have then in this case, much more than mere silence upon the part of respondent, with respect to the financial condition of the Lumber Company. We have active misrepresentation, plus concealment of material facts, which brings this case squarely within the rule laid down by the authorities which we have cited. Respondent, through its sales department, by these half-truths, and by concealing the true facts, well known to its executive officers, created an essentially false impression as to the financial and credit standing of the Lumber Company. We submit, therefore, that the opinion of the Circuit Court of Appeals, holding that no actionable fraud was shown, with respect to the financial standing of the Lumber Company, is obviously wrong; that it is based upon a false premise, and a misconception of the true rule which should govern the rights of the parties.

A.

Where positive representations are made, which are true when made, but pending the transaction conditions substantially change, to the knowledge of the party making the original representations, good faith and common honesty require that the party making such representations advise the other of the change which has taken place, and failure to do so constitutes actionable fraud.

We desire to call the attention of the court to another phase of this case which was wholly ignored by the Circuit Court of Appeals. The Iowa Supreme Court in the case of *Noble v. Renner*, 177 Iowa 509, 159 N. W. 214, laid down the following rule:

> "Even if representations are true when made, and they subsequently become false by change in the subject matter, it is the duty of the person who made these representations to inform the other, and if he fails so to do, he is guilty of fraud."

This rule has always been recognized and applied in the federal courts, and is well illustrated by the opinion of the Second Circuit Court of Appeals in *Loewer v. Harris*, 57 Fed. 368, in which that court said:

> "The law requires disclosure to be made only when there is a duty to make it, and this duty is not raised by the mere circumstance that the undisclosed fact is material, and is known to the one party and not to the other, or by the additional circumstance that the party to whom it is known knows that the other party is actually in ignorance of it; but when one of the parties, pending negotiations for a contract, has held out to the other the existence of a certain state of facts material to the subject of the contract, and knows that the other is acting upon the inducement of their existence, and, while they are pending, knows that a change has occurred of which the other party is ignorant, good faith and common honesty require him to correct the mis-

> apprehension which he has created. It becomes his duty to make disclosure of the changed state of facts, because he has put the other party off his guard. The doctrine is thus stated by Mr. Pollock, in his work, Principles of Contracts, page 491: 'It is sufficient if it appears that the one party knowingly assisted in inducing the other to enter into the contract by leading him to believe that which was known to be false. Thus it is where one party has made an innocent misrepresentation, but, on discovering the error, does nothing to undeceive the other."

The record in this case abundantly discloses that if there ever was any question as to respondent's knowledge of the true financial picture of the Lumber Company at any time, respondent did have full knowledge of the demands of the commercial bankers sometime prior to June 30, 1930, for on that date Stuart wrote Long, referring to Long's "next meeting with the Chase National Bank." In the months of August and September, 1930, in reliance upon the original representations, petitioner purchased from respondent, $35,000 of the Longview improvement bonds, and in October, 1930, $202,000 of such securities.

It is conceded that Halsey, Stuart never transmitted to petitioner the fact that the Lumber Company's guarantee had become seriously impaired. The Circuit Court of Appeals for the Seventh Circuit held that there was no duty to make such disclosure. Such a rule of law is proposterous, as applied to a transaction, involving the purchase of municipal securities of a city, located two thousand miles distant from the place where the transaction is consummated. When respondent became aware, as it did sometime prior to June 30, 1930, that the Lumber Company's guarantee was of little practical value, it became its duty to communicate such fact to petitioner. It never did so. In this respect, it is also clear that the Circuit Court of Appeals for the

Seventh Circuit ignored the true rule which governs the case at bar.

IV.

The rule of caveat emptor has no application to business transactions concerning the credit and financial standing of third persons. Even where one is under no obligation to supply information as to the credit standing of a third person, if he undertakes to do so, and leads the other party to believe that the credit of such third person is different from the facts within his knowledge, and fails to disclose information vitally affecting the credit of such third person, he is liable for fraud.

The Circuit Court of Appeals, as we have already pointed out, substantially applied to this transaction, the rule of *caveat emptor*. This ancient rule, while not without proper application, has been distinctly repudiated by practically every court in the land, as applied to transactions where the parties are dealing with subject matter not readily accessible, and as to which the parties do not have equal means of knowledge. In modern times, the rule of *caveat emptor* has been distinctly repudiated as applied to representations concerning the financial or credit standing of a third party.

In *Foreman v. Dugan*, 205 Iowa 929, 218 N. W. 912, the Iowa Supreme Court recognized that the situation of the parties, the character of the property which is being dealt in, and the knowledge and means of knowledge of the parties, are material factors in the application of the rule of *caveat emptor*. In *Noble v. Renner*, 177 Iowa 509, 159 N. W. 214, the Iowa court again recognized and applied the rule.

The subject matter of the sales involved in this case was municipal improvement securities of a city located two thou-

sand miles distant from the point where the transactions were conducted. Respondent was one of the largest bond and investment houses in the country, and favorably known to petitioner. Respondent well knew that petitioner would rely upon its representations concerning these securities, and the record leaves it clear that the representations made, were deliberately made, for the purpose of inducing petitioner to purchase large blocks of the Longview improvement bonds. The situation of petitioner was, therefore, very similiar to that of one who is about to extend credit to a third person.

The rule applicable to such transactions is well stated by the text writer in 23 American Jurisprudence, Fraud and Deceit, paragraph 89, page 869, as follows:

> "Failure to disclose facts which affect the financial status or responsibility of a third person generally entails answer to inquiries or concealment of material matters upon which reliance is placed, and is frequently regarded as fraudulent in nature. Thus, concealing the condition of a person in reference to whose credit inquiries are made is a fraud, as is also the wilful suppression of material facts in regard to the credit of a third person which the inquiring party is entitled to know. Although such inquiries need not be answered, yet one undertaking to do so is not at liberty to suppress a material fact within his knowledge. The question in such a case is always whether the defendant wilfully suppressed the truth with a view of giving a third person a credit to which he was not entitled."

In *Iasigi, et al. v. Brown, et al.*, 17 Howard 183, 15 L. Ed. 208, this court had before it a case in which defendant, a banker, in response to an inquiry by plaintiff, a manufacturer, as to the credit of one Thompson, and the companies which he controlled, stated that his house had done business with Thompson for more than twenty years; that Thompson, due to the failure of another concern, had recently suffered some very serious losses, but that defendant

felt he had an abundance to pay creditors. On the strength of this letter, plaintiff sold Thompson a large amount of wool on credit. Thompson failed, and it then appeared, for the first time, that defendant held a mortgage on practically all his assets. At the close of plaintiff's evidence, the trial court directed a verdict for the defendant. This court reversed the judgment of the trial court, holding that the case should have been submitted to the jury. In the course of the opinion delivered by Mr. Justice McLean, this court said:

> "As the court instructed the jury to find for the defendant, on the ground that the plaintiffs had not sustained their action; if the plaintiffs gave, or offered to give, any evidence which was fit to be considered by the jury, the judgment must be reversed. Any evidence conducing to prove that the statements of the defendant, in the letter of the 7th of April, in regard to the condition of the Thompsonville Company and Orrin Thompson, and their ability to meet their engagements and in regard to the value of Thompson's property were false, was competent evidence as tending to prove the facts. And especially was the testimony of Grant admissible, who heard the defendant say, if the plaintiffs had called on them personally, they would not have sold their wool to the Company; also the statement that before the letter was written Brown admitted that he had lost confidence in Thompson, and therefore the letter of the 7th of April was guarded. These and all other facts which conduce to show that the defendant acted in bad faith in writing that letter, are proper to be considered by the jury.
>
> By whatever motives the defendant may have been actuated, he is not to be held responsible, unless his letters did mislead, and were intended to mislead the plaintiffs. And it will be for the jury to say, on a thorough examination of the letters, and the facts and circumstances connected with them, whether they were calculated to inspire, and did inspire, a false confidence in the pecuniary responsibility of the Thompsonville Company and Orrin Thompson. If an impression, not only of their solvency, but of their success in business,

so that by selling largely to them no more than the ordinary risks of business were incurred, was made and authorized, by the letters, while, at the same time, their true condition was known to the defendant, which did not authorize such a representation, and which was intended to deceive and mislead the plaintiffs, the defendant may be justly held responsible. But of this the jury are to judge, they being the triers of the facts outside of the letters, and which should be submitted to them for their consideration and decision."

The rule which should govern this case was expressly recognized by the Fourth Circuit Court of Appeals in *Thermoid Rubber Company v. Bank of Greenwood*, 1 Fed. (2d) 891 (C. C. A. 4th). In that case an action was instituted for damages, based on fraudulent representations as to the solvency of a concern known as the Owen Tire & Rubber Company. Plaintiff, Thermoid Rubber Company, was a manufacturer of tires and rubber goods. J. L. Self was a banker associated with the defendant, Bank of Greenwood, and was a substantial stockholder of the Owen Company, which was heavily indebted to the bank. The Owen Company sought to become the distributor of the Thermoid Company's products in a large territory, and desired to purchase large quantities of tires and rubber goods on credit. Some shipments of goods were made by the Thermoid Company, and having some question as to the financial situation of the Owen Company, it addressed a letter of inquiry to the bank. An officer of the bank replied that the Owen Company's loans with the bank had recently been very substantially reduced; that the company had always met its obligations with the trade, and that the bank considered the company in good shape. These fact statements were true, but the bank officers knew that Self had personally taken up a number of the Owen Company's loans, and had kept it afloat as a going concern. Thermoid Company extended large credits to the Owen Company, which shortly went in-

to receivership. The trial court submitted the case to the jury, under instructions stating that if the Thermoid Company had extended credit to the Owen Company before the bank letter was written, no recovery could be had. The Fourth Circuit Court of Appeals reversed the judgment, saying:

> "One may deceive, though he says nothing which is itself untrue. The telling of but part of the truth may sometimes effectually mislead. If A, in answering a question of B's, chooses what he shall say and what he shall keep to himself, with a purpose of leading B to a wrong conclusion, he is morally a deceiver. If B understands the fact to be as A has intended he should, A may be legally liable as well. In order that he shall be, it is necessary that B shall have acted upon the conclusion to his hurt, as the learned court below correctly told the jury."

These authorities, we submit, announce the rule which the Circuit Court of Appeals should have applied to the case at bar. It was respondent's duty in making statements concerning the financial standing of the Lumber Company, to make a reasonably full disclosure of the true facts. Respondent could not, without incurring responsibility for fraud, indulge in half-truths, and misleading statements as to the true facts. It was not at liberty to furnish the favorable facts concerning the financial position of the Lumber Company, and suppress facts which, if disclosed, would have made it plain that the Lumber Company's guarantee was of extremely doubtful value. The decision of the Circuit Court of Appeals for the Seventh Circuit is quite obviously founded upon a misconception of the true rule of law which should be applied.

V.

The conclusion of the Appeals Court, that the letter of May 14, 1930, stating

> "We believe you have before you practically all the data covering this issue of bonds," and
>
> "You observe, of course, that this city has no funded debt other than these improvement bonds,"

was of "trivial materiality," substitutes the judgment of the Circuit Court of Appeals for that of the jury, on the weight of the evidence.

Petitioner expressly pleaded as a specification of fraud, the recitals of the Wood letter of May 14, 1930, set forth above, charging that this was a false representation that the Longview local improvement bonds were the only outstanding bonds which were liens, or charges, upon Longview real estate. In its answer respondent expressly admitted that it well knew that the diking district bonds were outstanding, and that the assessments for payment of those bonds were liens upon substantially every lot and parcel of land within the city. Of course, respondent well knew of the existence of the diking bond issue, for it had purchased the entire issue from the Lumber Company in 1925, and resold the same.

The Circuit Court of Appeals for the Seventh Circuit, in its opinion, characterized the Wood letter as

> "A careless statement for a representative of respondent to make, implying, as it did, that the bonds involved were part of the funded debt, and that there were no other obligations on the part of the city which were equal or superior to them." (R. 667)

The opinion of the Appeals Court then goes on to dispose of this charge of fraud in the following words:

"However, Hubbell admitted that he knew that the bonds did not constitute a funded debt, and he also admitted that he had read a paragraph in the Long-Bell balance sheet referring to the accrued assessments on Diking and Improvement District bonds guaranteed by Long-Bell, and to the fact that the former were issued to take up warrants issued in payment for construction work, and that he knew that there was a consolidated diking district, but he had never thought to ask where the diking system was located. He also admitted that until after 1932 or 1933 he had never investigated the possibility of overlapping municipal districts. In view of all these facts, we are of the opinion that the materiality of the letter and its possible implications is trivial."

Were the statements and implications of the Wood letter of "trivial materiality," and did the Seventh Circuit Court of Appeals properly so declare? First, it must be noted that Frank Wood, the writer of the letter, was the sales manager of Halsey, Stuart, in the territory embracing the State of Iowa. Hubbell had known Wood for several years. He knew him as a responsible officer of Halsey, Stuart & Co. Over Wood's personal signature, in this letter Hubbell was told that he had already been furnished "practically all the data covering the issue," and that Longview had no funded debt, "other than these improvement bonds."

It is clear that these statements were expressly made to induce the purchase of the bonds by petitioner. Would not any well-informed purchaser of bonds understand from the plain recitals of this letter, that he had received all the material facts which he needed, in order to form a considered judgment as to the value of the bonds? Would not any well informed purchaser of securities understand that the Longview improvement bond issue constituted the only outstanding issue of assessment securities in the City of Longview?

Hubbell had already been told that more than one-third of the local improvement bonds originally issued, had been retired, and that only about $2,000,000 remained outstanding. Had these been the only special assessment liens upon the Longview property, it is apparent that the value of the improvement bonds, as investments, would have been materially enhanced. The fact that $2,554,000 of diking district bonds were then outstanding, and were secured by superior liens upon the very properties, which constituted the sole tangible security for the local improvement issues, was certainly a very material factor in the value of the local improvement bonds for investment purposes.

Respondent was not merely silent with respect to the existence of the diking district bonds and assessments. There was a direct, positive representation that the city had no funded debt, "other than these bonds." Of course, special assessment securities do not constitute general obligation bonds of a municipality, and as such, are no part of its funded debt, and Hubbell so understood. But, by the use of the words, "other than these bonds," respondent led Hubbell to believe that these securities were the only ones of the same general type, outstanding in the municipality. Had the statement merely been that the City of Longview "has no funded debt," it would have been true, but the statement that the city had no funded debt "other than these bonds," was extremely misleading, and constituted a false representation, in view of respondent's knowledge of the character and amount of outstanding diking bonds.

We are unable to understand how the Circuit Court of Appeals for the Seventh Circuit arrived at the conclusion that the statements of the Wood letter of May 14, 1930, were rendered of "trivial materiality" by Hubbell's statement, on cross examination, that in 1930, it was not his general custom in buying, for example, a water works bond

in a particular city, to investigate and ascertain how many city bonds, school district, or county bonds were outstanding in the same territory. Here Hubbell was directly told that there were only $2,000,000 of special assessment securities outstanding in this city of 12,000 population. If this was a false and misleading representation, respondent's liability therefor is not affected by the custom or practice which Hubbell, as a bond purchaser, customarily followed. We shall point out in another division of this brief that contributory negligence on the part of Hubbell, or petitioner, is no defense to a charge of fraud, although the Seventh Circuit Court of Appeals apparently assumed otherwise in deciding the case.

In determining that "the materiality of the letter (of May 14, 1930) and its possible implications is trivial," the Seventh Circuit Court of Appeals was apparently influenced by the same misconception as to the rules of law which govern the rights of the parties as appeared in the opinion with respect to other charges of fraud. Apparently that court regarded the statements of the Wood letter as nothing more than a failure to disclose the existence of the diking district bonds. But, Halsey, Stuart was not merely silent with respect to the existence of those bonds. The language of the Wood letter was a direct representation that there were no other bonds of similar character outstanding, and brings the case squarely within the rule that a seller of securities may not, by misleading statements, induce in the mind of a prospective purchaser an understanding of facts and conditions vastly different from those known to exist, and escape liability for misrepresentation. Had Halsey, Stuart & Co. said nothing whatever as to the existence of other securities at Longview, perhaps there would have been no fraud. Had Halsey, Stuart merely said that the City of Longview had no funded debt, such statement would have been true. The language of the Wood

letter constituted a representation that the improvement bonds were the only ones outstanding, and brings the case squarely within the rule of law cited under Division III of this brief.

Hubbell testified positively that he relied upon the Wood letter. We have already pointed out that it was natural for him to do so, because of Wood's position with respondent, and Hubbell's previous acquaintance with him. We have always understood that the weight of the evidence, and the inferences to be drawn therefrom, are questions for submission to and determination by a jury, and that no court has any right to substitute its own judgment upon conflicting facts, for that of the jury. Of course, the Wood letter was a written instrument, and it was the duty of the court to construe it in the light of the circumstances surrounding the parties. The Circuit Court of Appeals could only arrive at the conclusion which it did, by ignoring well established rules of law pertaining to known false and misleading statements.

VI.

That petitioner might have learned the true facts with respect to the location of the industrial mill properties at Longview, by independent investigation, or could have learned of the trend of the Lumber Company's earnings from other sources, constitutes no defense to charges of fraud. The Iowa law (which governs this case) is that mere negligence of a defrauded vendee can never be pleaded as a defense to a charge of fraud.

Throughout the opinion of the court below there appears, at various times, the thought that petitioner failed to adequately protect itself against the consequences of respondent's misrepresentations, by investigation on its own account. For instance, it is stated at R. 664, that during

May, 1930, "it became publicly known that Long-Bell had sustained substantial operating losses since the beginning of the year." The opinion points out that petitioner was a subscriber to the "Chicago Journal of Commerce," and "The Analyst," which, in their respective issues of May 20 and May 23, 1930, carried reports that the Lumber Company had sustained an operating loss of $300,000 for the three months ending March 31, 1930. At R. 668, the Appeals Court, in speaking of the January 1, 1930 financial report and balance sheet of the Lumber Company, states:

> "Moreover, that report contained within its own four corners what might well have served as notice of financial difficulties of the company—we refer to a paragraph in the letter to stockholders dated March 12, 1930, which accompanied the balance sheet, stating that general conditions following the stock market break had seriously affected the consumption of lumber which was seriously reflected in Long Bell business, and that what the last two quarters of the year would be, depended upon crops and general business conditions. It is inferable that if appellant had been very anxious to conceal the condition of Long Bell it might well have removed this letter from the accompanying statement, calculated as it was to raise questions as to the then position of the company."

On the same page the court points out that

> "Had appellee made use of the financial news reports available in its own offices it would have learned of this fact long before the subsequent purchases were made. Not only did it not make any use of these sources of information, but it did not even inquire of appellant as to whether or not the situation had changed in any way."

At R. 671 the court points out that the literature submitted to Hubbell disclosed that the establishment of Longview as a city by the Long-Bell Lumber Company was a very grandiose scheme, and that

"It seems to us that any really thoughtful consideration on the part of the appellee would have suggested it, and would have suggested more pertinent questions, such as the success of the development, the population in 1930, the valuation of the benefited properties, and the amount of the unsold land. It appears that when appellee did become suspicious and made inquiries concerning the city, it was able to find out the facts at once, and there is nothing to suggest why it could not have found them with equal facility before it purchased the bonds."

These excerpts from the opinion of the Circuit Court of Appeals make it plain that that court was very largely influenced in arriving at the decision which it did, by the thought that petitioner did not use adequate care to protect itself against the consequences of respondent's conduct. We are unable to understand the statements of the opinion upon any other hypothesis.

Of course, it must be borne in mind, that the parties were dealing in the special assessment securities of a municipality located two thousand miles distant from Des Moines, Iowa, where the negotiations were conducted and the transaction consummated. It must be borne in mind that the only information which petitioner could have gained by an examination of the financial news services was that the Lumber Company had sustained certain operating losses in the early months of 1930. These financial news services did not disclose the fact that the Lumber Company had under contemplation the formation of a new subsidiary, to which all of its liquid and unencumbered assets would be conveyed. Such information was known only to the officers of the Lumber Company, its commercial bankers, and certain "insiders" like respondent.

Here again it is apparent that the Circuit Court of Appeals has wholly misconstrued and misapplied the rules of law which govern the rights of the parties. It is the rule

in Iowa, and in most other jurisdictions, that failure of a purchaser of securities to conduct an investigation on his own account, constitutes no defense to a charge of fraud in connection with the sale of such property. It is well established by the decisions of the Iowa Supreme Court, that the fact that one may not have acted with reasonable prudence, will not defeat recovery where he relies upon the representations of a seller. The Iowa Supreme Court has time and again laid down this wholesome rule, and it was utterly ignored by the Seventh Circuit Court of Appeals in its decision.

In *Ford v. Ott*, 186 Iowa 820, 173 N. W. 121, at page 828, the Iowa Supreme Court states the rule in these words:

> "A person guilty of fraud may not be heard to urge that his victim ought to have found him out in time to have prevented the wrongdoer from perpetrating the wrong undertaken."

In *Creamer v. Stevens*, 192 Iowa 920, 185 N. W. 581, which involved an exchange of Dakota lands for Texas lands, the trial court directed a verdict for the defendant at the close of plaintiff's evidence. The judgment was reversed by the Iowa Supreme Court, which said:

> "It is contended by appellant that, if plaintiff relied upon the statements of defendant, and was defrauded thereby, he is entitled to relief, even though he failed to resort to the means available for the detection of the falsity of the statements; and that he is entitled to relief even though he made some examination of the land in question. Many of the cases before cited are cited on this proposition. In one of the last cases, *Christensen v. Jauron, supra*, the court instructed the jury that if, upon inspection of the land, plaintiffs ascertained the falsity of the representations, if made, or might have done so by the exercise of ordinary diligence, they might not recover. We there said, as we have said in other cases, that the law is not thus tender of persons practicing deceit; that, if plain-

tiffs did ascertain the actual condition of the land, they could not have relied on the representations. But the victim was not required to exercise diligence to ascertain whether the wrongdoer has lied to him, as a condition precedent to recovery of the damages suffered in consequence of the deception. *Hise v. Thomas, supra; Holmes v. Rivers,* 143 Iowa 702; *Hetland v. Bilstad, supra.* In the *Holmes* case, we said:

> 'A seller who has successfully entrapped his victim with false statements of the kind mentioned will not be permitted to escape when called upon to account in a court of justice, on the ground that his dupe did not, but ought to have, suspected him to be a knave.' "

In *Gardner v. Trenary,* 65 Iowa 646, 22 N. W. 912, plaintiff conveyed a house and lot to the defendant in exchange for an exclusive license to sell a patented article in a particular territory. The patent covered a contrivance designed to be attached to a walking plow. The invention could not be made to work as defendant claimed, and represented. Plaintiff saw the patented article, and it was urged that had he made an adequate inspection and investigation of it, he could have readily ascertained the true facts, and hence could not complain of the defendant's fraud. The Iowa Supreme Court disposed of this contention in these words:

> "But the law will not allow one committing a fraud of this kind to protect himself by the claim that his victim was easily deceived and did not act in the matter with reasonable prudence." (65 Iowa, 648)

These authorities from the Supreme Court of Iowa make it plain that petitioner was under no such burden of investigation, as the opinion of the Circuit Court of Appeals imposed upon it. The subject matter of the sale involved in this case was not tangible personal property, which was at hand, and open to inspection. The parties were dealing

in special assessment bonds of a municipality. These bonds supposedly had been investigated by respondent, and approved as meeting respondent's requirements for a desirable investment security. The City of Longview was more than two thousand miles distant from Des Moines, Iowa, where the transaction took place. Petitioner was not told that the improvement bonds were of little or no value, based upon their real estate security, and that respondent had purchased them solely because they bore the guarantee of the Long-Bell Lumber Company. Neither was respondent informed that the Long-Bell Lumber Company was in a precarious financial condition, and that its commercial bank creditors were demanding that the company be dismembered, and all of its liquid and unencumbered assets be transferred to a new corporation, for the purpose of placing commercial bank creditors in preferred position.

The Circuit Court of Appeals for the Seventh Circuit apparently considered petitioner's failure to conduct an independent investigation, as of controlling importance. Such fact was utterly immaterial under the rule of law which has long obtained in Iowa, as we have already pointed out. Contributory negligence on the part of a defrauded purchaser is no defense to a charge of this character, and the Seventh Circuit Court of Appeals erred in holding that petitioner's conduct in not conducting an investigation on its own account barred its right of recovery.

CONCLUSION.

We have pointed out in the preceding portions of this brief that the decision of the Seventh Circuit Court of Appeals was predicated upon wholly untenable grounds. For the most part, the opinion of that court correctly states the facts disclosed by the record. The court below, however, incorrectly stated at R. 672 that

"The record does not indicate that appellant (Halsey, Stuart) had any more knowledge than appellee that this vacant, unimproved land, still belonging to Long-Bell, amounted to from sixty to seventy-five per cent of the total. Certainly, there is nothing of record to indicate that appellant deliberately withheld information as to this from appellee."

The court below overlooked some very vital testimony, for the record shows that respondent had in its possession Exhibit "P-50," the 1927 year end sales report of the Longview Company to Mr. R. A. Long. That document shows that less than half of the platted lots included within the City of Longview had been sold as of December 31, 1927, and it must be borne in mind that only approximately one-third of the land, embraced within the limits of the City of Longview, was ever platted. (See R. 214) It is conceded that real estate sales, after 1927, at Longview, substantially ceased. (R. 215)

Respondent likewise had in its file Exhibit "P-51," a similar report covering the activities of the Longview Company real estate sales department for the month of May, 1928, and Exhibit "B-18," a similar report for the month of April, 1928. These exhibits, all of which were produced from the files of respondent, make it plain that respondent was fully aware of the situation which existed, and well knew that the efforts of the Lumber Company to rapidly market the Longview real estate had proved a failure, and in May, 1930, when the bonds were offered to petitioner, respondent well knew the facts.

We have then this situation: In 1925, 1926, and 1927, respondent purchased from the Lumber Company the various issues of the Longview local improvement district bonds. It knew at that time that the bonds were without substantial value, except as the guarantee of the Long-Bell Lumber Company insured their payment at maturity. By May 1, 1930, respondent well knew that the grandiose

scheme of urban development which the Lumber Company had sponsored, had proved a disastrous failure. By that time it knew that the Lumber Company had fallen upon disastrous times, and that the guarantee of the Lumber Company was of no substantial value. Respondent well knew, in other words, that the Longview local improvement bonds were well-nigh worthless, because neither the real estate assessments, nor the guarantee of the Lumber Company, were sufficiently strong to indicate more than a remote possibility of repayment. No one can read this record and say that a jury could not conclude that this was the true state of affairs. In fact, we believe that the undisputed evidence affirmatively establishes the facts as we have outlined them.

It was under these circumstances that respondent, first delivered to petitioner the offering circular, Exhibit "B-1," and later the other exhibits which contained such glowing accounts of the commercial prospects of the City of Longview as a great industrial center, and in which the representations were positively made that the vast properties of the Long-Bell Lumber Company, Weyerhaeuser Timber Company, Longview Fiber Company, and others, were within the City of Longview. No one can read this record and conclude that the officers of respondent actually believed that these vast industrial properties were subject to assessment in any of the Longview local improvement districts, and the evidence was such as to make the question of respondent's knowledge of the true location of the industrial properties a question for the jury. In any event, respondent had no right to make reckless statements concerning the location of these industrial properties to induce petitioner to invest its policy reserves in such securities. The record shows that respondent's conduct was reckless in the extreme, if it in fact had no knowledge concerning the true location of the mill properties.

It is equally plain that the assuring letter written by Wood, respondent's Chicago sales manager on May 14, 1930, contained positive representations which led petitioner to believe that the Longview local improvement district bonds were the only outstanding securities in the territory, and that nothing could have been further from the truth. It is also established that respondent well knew the true situation with respect to the Long-Bell guarantee, and with such knowledge, indulged in half-truths and created in the minds of petitioner's officers a wholly false impression as to the strength of the Lumber Company's guarantee. These facts, most of which are wholly undisputed, clearly establish that the question of respondent's liability for false and fraudulent representations concerning the Longview local improvement district bonds presented an issue for determination by a jury. The Circuit Court of Appeals erroneously applied to the facts of this case the ancient doctrine of *caveat emptor*. It erroneously determined that the so-called "hedge clause" of the offering circular afforded a legal defense to respondent for its misrepresentations concerning the location of the mill properties and the frontage of the City of Longview upon the Columbia River. That court clearly invaded the province of the jury in determining that the statements of the Wood letter of May 14, 1930, were of "trivial materiality."

The conduct of respondent in this transaction is such that it should shock the conscience of any court. The Circuit Court of Appeals ruled that petitioner was without remedy under the circumstances disclosed by this record. If this be true, it is, indeed, a severe indictment of our judicial system, and of the rules of law which govern the rights of the parties. We do not believe that the decision of the Circuit Court of Appeals can be upheld, and we respectfully submit that the decision of that court was based

on untenable grounds, and that the same should be reversed by this court.

Respectfully submitted,

JOSEPH G. GAMBLE,
ALDEN B. HOWLAND,
Attorneys for Petitioner.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1940.

No. 291.

EQUITABLE LIFE INSURANCE COMPANY OF IOWA,
Petitioner,

vs.

HALSEY, STUART & CO., A Corporation, *Respondent.*

PETITIONER'S REPLY BRIEF.

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constituted representations that petitioner had been furnished all the facts within respondent's knowledge, that there were no other similar securities outstanding, and that such representations were material. Whether such representations were false, and were relied upon by petitioner, were properly submitted to the jury by the trial court, and the determination of the Seventh Circuit Court of Appeals, that the letter was of "trivial materiality," substituted the judgment of that court for that of the jury on the weight of the evidence 13

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A mere reading of the opinion of the Seventh Circuit Court of Appeals demonstrates that it was predicated in large measure upon the thought that had petitioner adequately investigated the Longview, Washington improvement bonds, it would have discovered the true facts, and that its failure so to do bars recovery. This is directly contrary to the rule of law which prevails in Iowa 13

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PETITIONER'S REPLY BRIEF.

THE FACTS.

Counsel for respondent preface their brief with a "Supplemental Statement of the Case." While it is said that the statement found in petitioner's brief accords generally with the record, there follows a lengthy recital of the testimony, given principally by witnesses for respondent. In most cases this evidence was directly contradicted by that of petitioner. In presenting this "Supplemental Statement," and indeed throughout respondent's brief, counsel have ignored the rule that in determining the sufficiency of the evidence for submission of this case to the jury, the evidence, and all reasonable and proper inferences which may be drawn therefrom, must necessarily be viewed in the light most favorable to the petitioner.

We shall, as briefly as possible, endeavor to point out the

more important instances in which respondent's "Supplemental Statement of the Case," is merely a statement of respondent's own evidence, and which has been so directly contradicted.

On page 4 of their brief, counsel for respondent urge that the information concerning Longview, which was contained in the circular, plaintiff's Exhibit "B-1," was dictated by the advertising manager for The Long-Bell Lumber Company, and was sent to respondent on April 11, 1927. While respondent's witness Simond so testified, an examination of this circular, and of plaintiff's Exhibits "B-2" and "B-3" (reproduced R. 414-417) discloses that respondent made substantially the same statements with reference to the location of the Long-Bell and Weyerhaeuser mill properties, and the frontage of the city upon the Columbia River, in 1925 and 1926. While Mr. Simond testified that he had never been in Longview, and knew nothing concerning the location or the frontage of the city upon the Columbia River and the location of the industrial plants, other vice presidents of respondent, MacNeille, Shrader and Sleep, were shown to have made at least five or six trips to the City of Longview. (R. 214, 153) Walter I. Sleep, while in Longview in May, 1925, entered into the first contract with the Lumber Company for the purchase of local improvement district bonds. (See Exhibit P-34, reproduced R. 513, 72) Sleep also acted for respondent in acquiring the diking district bonds. (R. 77) Neither MacNeille nor Shrader, although both testified as witnesses in the case, denied knowledge of the location of the Longview corporate limits, and the mill properties. These facts make it clear that in determining whether respondent knew the true facts with reference to the frontage of the city upon the Columbia River, and the location of the mill properties, the jury was not limited by the testimony of respondent's witness Simond.

The testimony of Simond that inquiry was made by peti-

tioner for information as to the location of the Long-Bell mill properties, about October 16, is directly contradicted by the testimony of F. W. Hubbell, petitioner's vice president and treasurer. (R. 196, 197) The fact that Hubbell made no such request is further indicated by the confirmation sheets, Exhibits "B-45" and "B-46," by which, on October 16, 1930, respondent confirmed the sale to petitioner of $200,000 of the local improvement district bonds, and the purchase, from petitioner, on the same day, of a like amount of Chicago Tax Anticipation Warrants. (See Exhibits "B-45" and "B-46," reproduced R. 486, 487) The telegram which Simond claims was sent to Longview for information was not dated until October 16, and reply thereto was not received in Chicago until October 17.

On page 6 of their brief, counsel for respondent state that F. W. Hubbell had been purchasing securities for petitioner for twenty years prior to 1930.

Hubbell testified that he first became active in the affairs of petitioner about twenty years before the trial, which was held in April, 1939. (R. 185) He also said:

> "Up until 1928, we were engaged principally in the purchase of first mortgages on farms, and while we had a few municipals for the past twenty-five years, very few to begin with, I would say that along about 1922 we began to enlarge our municipal investment account." (R. 185)

On page 6 of their brief, counsel for respondent state that upon being shown the offering circular, Mr. Hubbell expressed an interest in the bonds, and specifically requested the annual report of The Long-Bell Lumber Company for the year ending December 31, 1929. Hubbell's testimony with reference to this transaction was as follows:

> "I asked Mr. Kelley for more information, after looking at this circular, on the City of Longview, what the property was out there, and about the Long-Bell Lumber Company." (R. 187, 188)

Counsel urge, on page 7 of their brief, that the legend appearing beneath the map set forth on the back of Exhibit "B-25," indicates that the map did not purport to show merely the City of Longview, but the entire Longview development, including the industrial area. There was nothing on the map indicating that the industrial area of Longview was separate and apart from the city itself, and if the city had, in fact, a frontage of seven and one-quarter miles upon the Columbia River, as was positively stated in the offering circular, Exhibit "B-1," the whole industrial area was necessarily within the corporate limits.

On pages 8 and 9 of their brief, counsel for respondent state that before purchasing a single Longview improvement bond, Hubbell knew of the existence of Consolidated Diking District No. 1, of the amount of its bonds that were outstanding, of the purpose for which the bonds had been issued, and that such bonds were secured by assessments payable in installments over a period of twelve years. This statement is based upon a paragraph of the Ernst & Ernst letter, which accompanied The Long-Bell Lumber Company's December 31, 1929 balance sheet.

On this phase of the matter Hubbell testified that he read the statement in the letter of Ernst & Ernst which accompanied the financial statement and balance sheet of December 31, 1929, but that the statement did not show where the diking district was located, and that he gave no consideration thereto. (R. 191, 192) The recitals of the Ernst & Ernst letter did not indicate that the City of Longview was embraced within the diking district, and did not disclose that assessments levied for the payment of the diking district bonds were liens upon lands located within the Longview improvement districts. The jury was entitled to consider the facts stated in the Ernst & Ernst letter accompanying the balance sheet in the light of the Wood letter of

May 14, 1930, that "the city has no funded debt other than these improvement bonds."

Again on page 9 of their "Supplemental Statement," counsel for respondent say that in October, 1930,

> "Hubbell inquired for the first time whether District No. 11 was co-extensive with the city limits of Longview, and whether the Long-Bell mills were located within the corporate limits of the city." (R. 302)

As we have already pointed out, Hubbell testified positively that he knew that the limits of District No. 11 were practically co-extensive with the City of Longview some time before October, 1930, and denied making any such request.

On page 10 of their brief, counsel for respondent say:

> "Contrary to the assertion in petitioner's statement of facts (p. 13) that the Lumber Company defaulted in 1931 in the payment of local improvement assessments on practically all of the improved lots and lands in the various local improvement districts, the facts are that sufficient collections of assessments were made by the several districts so that, at the time of trial, interest coupons falling due in 1936, and, in some cases, in 1937 and 1938 had been paid in full."

This statement is extremely misleading. The assessments in the various local improvement districts were payable in ten equal installments, (R. 247) and were so arranged that had the assessments all been paid, there would have been a fund sufficient to pay interest, and to retire one-tenth of the face amount of the bonds outstanding each year. (R. 247) The bonds, by their terms, were payable on or before twelve years from the date of issue.

Mrs. Faye Scott Witt, City Treasurer of Longview, testified:

> "When I came into office, the 1st of January, 1933, the Long-Bell interests had already been unable to pay

some of the installments on property owned by them which they had paid pretty regularly up to and including the year 1930. It was the custom at that time, when it was time to pay interest on the bonds, if the money received from the individual owners did not make the fund sufficient to meet the interest payments, then the Long-Bell Lumber Company made note of that and paid their installments on certain pieces of property in an amount sufficient to take up the interest. The Long-Bell Lumber Company and its subsidiaries did not pay assessments sufficient to enable us to take up the ten per cent of the principal amount of the bonds in the years 1931, 1932, 1933 and subsequent." (R. 248)

Mrs. Cecile Steele, employed as a deputy in the county treasurer's office of Cowlitz County, Washington, at which the general taxes and the diking district assessments were payable, testified:

"The Longview Company, the Longview Suburban Company, the R. A. Long properties and the Long-Bell Lumber Company, paid general taxes upon the real estate assessed in the name of those companies in the City of Longview through the second installment of 1930—that is, they paid their installments that came due in November, 1931, the second half of their 1930 taxes. They did not pay the 1931 taxes due in 1932 on the greater portion of the unimproved tracts. So, a large amount of unpaid general taxes accumulated on their properties in Longview." (R. 266)

In response to a question as to how long that condition continued, the witness said:

"Well, the taxes were unpaid in the fall of 1937. It was necessary for the county to foreclose on them for the 1931 and prior taxes, for which purpose the county instituted a foreclosure action in the Superior Court of Cowlitz County, Washington. The Court gave the County judgment on the property and the County Treasurer was ordered to sell all of the property at foreclosure. He had very few bidders on the sale and the property was deeded to the County." (R. 266, 267)

At pages 10 and 11 of their brief, counsel state that respondent had purchased the bonds, which it sold to petitioner, at prices only a point or two below those at which the bonds were purchased by petitioner, except with respect to one lot of bonds, where, due to special circumstances, respondent was able to purchase the bonds at 89. Counsel omit to inform the court that this one lot comprised $200,000 par value of improvement district No. 11 bonds which respondent bought from B. M. Baruch of New York City, in October, 1930, at a price of 89, of which respondent resold $170,000 to petitioner at a price of 99¾. (R. 285) Thus, respondent made a profit of more than $17,000 on $170,000 of the bonds purchased by petitioner.

On page 11 of their brief, counsel for respondent indicate that Windsor, petitioner's representative, spent a considerable amount of time at Longview in June, 1931. Windsor testified that he was in Longview but one day. (R. 388)

At page 12, counsel for respondent urge that the statement in petitioner's brief that it made complaint to Kelley that the bonds had been misrepresented in the summer or fall of 1931, does not accurately state the testimony of Mr. Hubbell. Upon this issue Hubbell testified:

> "After the receipt of Mr. Windsor's report, in June, 1931, and after the information from Halsey, Stuart & Co. in July and August, 1931, I complained to Mr. Kelley about the bonds. (R. 209)
>
> In my complaints to Mr. Kelley, I told him that I thought the bonds had been misrepresented; I said that a number of times. I never wrote a letter making any formal demand." (R. 209)

Mr. Windsor also testified that he discussed the Longview bonds with Kelley on a number of occasions after his return from Longview about July 1, 1931, and made complaint to him that Halsey, Stuart & Co. had misrepresented the bonds

(R. 388-389), and should take them off petitioner's hands. Kelley testified to the fact of complaints. (R. 309-310)

On page 12 of their brief counsel for respondent state that Hubbell continued to buy bonds from respondent, after he was fully advised of all the facts now alleged to have been misrepresented. Petitioner purchased no local improvement bonds after February, 1931. (R. 206, 207) The bonds which petitioner purchased from respondent in 1931, 1932 and 1933 were issues having no connection with Longview, Washington, or The Long-Bell Lumber Company.

At page 13 of their brief, counsel for respondent state that the year 1929 had been a fairly prosperous year for The Long-Bell Lumber Company, and that it looked forward to an improvement in 1930, despite the market break of 1929.

Mr. Jesse Andrews, General Counsel for the Long-Bell interests, testified that the balance sheet as of December 31, 1929, showed an addition to surplus of $1,591,000, realized in part from profit on the sale of two tracts of standing timber to the Lamm and Kesterson Lumber Companies.

On page 13 of their brief, counsel for respondent urge that the suggestion of the officers of the Chase National Bank that the Long-Bell Company form a new subsidiary, which would own all liquid assets, and conduct borrowing operations with commercial banks, was not given serious consideration by the Long-Bell officers until the latter part of July, 1930. This statement is directly contrary to the evidence of the Long-Bell officers. Thus, in writing Mr. Andrews (Long-Bell counsel), on May 15, 1930, concerning the demands of the Chase Bank, R. T. Demsey, Long-Bell vice president, said:

> "Mr. Long assigned to you and to me the job of considering the creation of a new company, as above mentioned, and bringing it into existence just as quickly as

possible." (See plaintiff's Exhibit "W-13," reproduced R. 534)

H. L. Stuart, President of respondent, was consulted concerning the demands of the commercial banks some time before June 30, 1930, for on that date, in writing R. A. Long, Chairman of the Lumber Company, Stuart said:

> "I am sure that Mr. Andrews gave you my message, which was to ask you to kindly let me know the outcome of your next talk with the Chase Bank." (See Exhibit "B-12," reproduced R. 442; R. 105)

R. T. Demsey, a Vice President of Long-Bell, testified:

> "My general recollection is that Mr. Stuart was present when the New York trip was discussed. I haven't been able to do better in recollecting it than I did yesterday. I can only say that it was the spring or summer of 1930, and I can't place it by months. My recollection is that Mr. Long, Mr. Andrews and myself were present, and I believe it took place in Chicago.
>
> The substance of the conversations was that the Chase Bank in New York had suggested that they thought it would be wise on our part to strengthen the current financial position of the Long-Bell Lumber Company and that one way that that might be done was to create a separate subsidiary, wholly owned by the Long-Bell Lumber Company, to own the liquid resources and do the bank borrowing. My recollection about the situation is that we were explaining this to Mr. Stuart so that he would understand the situation as we found it, and I don't know that there was so much soliciting his opinion as there was counseling with him; but my recollection is, stating it briefly, that Mr. Stuart's comment was that if we found that our ability to carry commercial bank loans could only be worked out by having a separate subsidiary, that that was probably the thing to do." (R. 148, 149)

On pages 14 and 15 of their Brief, counsel urge that the officers of respondent did not regard the formation of the Long-Bell Lumber Sales Corporation as reflecting in any

way upon the financial integrity, or solvency, of The Long-Bell Lumber Company. While both Shrader and Stuart testified in accordance with this statement, it would be strange, indeed, if the jury gave full credit to such an impossible story. For several months prior to May 1, 1930, the Long-Bell executives had been pleading with respondent to do additional financing, pointing out the need for Long-Bell to "strengthen its current cash position," and that additional financing was particularly necessary because of the "nervous, critical and sensitive attitude" of Long-Bell's commercial bank creditors. (R. 436) For several months prior to May 1, 1930, the Long-Bell executives had been begging for additional loans, even going so far as to offer a mortgage upon the assets of the Longview Daily News, a Long-Bell controlled newspaper at Longview, as security for a loan of $150,000.

Respondent's officers, Stuart and Shrader, during this period, were constantly advising the Long-Bell officers, that, in view of the price at which Long-Bell credit was selling in the open market, it was hopeless to undertake additional financing. The jury well knew that Shrader, Stuart and respondent's other officers, were men of large experience in business affairs. Stuart and Shrader both testified that the formation of the Sales Corporation, and the transfer to it of substantially all of the liquid and unencumbered assets of Long-Bell, would leave the Lumber Company substantially no assets with which to perform its guarantee of the diking district and local improvement bonds.

Respondent had marketed more than $25,000,000 of first mortgage bonds of The Long-Bell Lumber Company, secured by liens upon standing timber and mill properties, including those located just outside the limits of Longview, Washington. It had likewise marketed approximately $6,260,000 of diking and Longview local improvement bonds, which were unconditionally guaranteed by Long-Bell, as well as an

issue of $3,250,000 of Long-Bell collateral gold notes, secured by the pledge of all the outstanding bonds of Long-Bell's railroad subsidiary. The formation of the Sales Corporation and the transfer to it of substantially all the unencumbered properties of Long-Bell, plus most of its cash and liquid assets, rendered Long-Bell's guarantee of payment of the local improvement district bonds well nigh worthless.

Hubbell made no personal inspection of Longview until some time in the summer of 1934, when he spent several days there in company with Messrs. MacNeille, Andrews, and others. Shortly after Hubbell's return from Longview, the claim involved in this case was presented to respondent by petitioner, through its attorneys, and is identified as Exhibits "52," "52-A" to "52-L," inc. This exhibit is not reproduced in the record, but will be found among the exhibits certified to this court, and an examination thereof will disclose that petitioner carefully reserved in this written claim, any and all rights to which it might be entitled.

At page 18 of their brief, counsel for respondent urge that after the institution of this suit, petitioner, in its report to its policyholders, was shown to have been carrying the Longview improvement bonds at a valuation greater than set forth in its verified petition. F. W. Hubbell testified that petitioner undertook to comply with instructions of the various insurance departments of the states in which it operated, in the book valuations at which its various assets were carried, (R. 207), and that under the insurance department regulations, when current coupons upon bonds have been paid, they are customarily carried on the books on an amortized basis. (R. 210) At the 1935 year end, petitioner held $272,000 par value of Longview improvement bonds, which were carried on its books at $231,200. (R. 202) At the 1936 year end, petitioner had $266,000, par value, of

said bonds, which were carried on the books at $26,600, and the book value of the same bonds had been reduced on December 31, 1938, to $18,620. (R. 208)

SUMMARY OF REPLY ARGUMENT.

I.

The opinion of the Seventh Circuit Court of Appeals gave controlling effect to the "hedge clause" of the offering circular; and in so doing, acted without foundation in legal precedent or authority.

II.

Petitioner has met the burden of establishing by a fair preponderance of the evidence the allegations of fraud.

III.

The furnishing of the January 1, 1930 Long-Bell Lumber Company financial statement and balance sheet, with no explanation that conditions therein shown had materially changed, within respondent's knowledge, the writing of the Wood letter of May 14, 1930, that petitioner had been furnished "substantially all the data," and the writing of the Wood letter of June 4, 1930, stressing the importance of Longview as a commercial center, and the financial strength of the Lumber Company, as indicated by the recent substantial retirement of its first mortgage bonds, are sufficient to carry to the jury the issue of respondent's fraud in indulging in half-truths with respect to the financial standing of the Lumber Company.

IV.

The rule of caveat emptor does not apply in Iowa in all cases in which the parties are dealing at arm's length. The situation of the parties, the subject matter in hand, the

knowledge, and means of knowledge of each of the parties, are to be taken into account upon the question of fraud. This case, therefore, is not one in which caveat emptor may be applied.

V.

The trial court properly ruled that the statements of the Wood letter of May 14, 1930, that

> *"We believe you have before you practically all the data," and*
>
> *"You will observe that the city has no funded debt other than these improvement bonds,"*

constituted representations that petitioner had been furnished all the facts within respondent's knowledge, that there were no other similar securities outstanding, and that such representations were material. Whether such representations were false, and were relied upon by petitioner, were properly submitted to the jury by the trial court, and the determination of the Seventh Circuit Court of Appeals, that the letter was of "trivial materiality," substituted the judgment of that court for that of the jury on the weight of the evidence.

VI.

A mere reading of the opinion of the Seventh Circuit Court of Appeals demonstrates that it was predicated in large measure upon the thought that had petitioner adequately investigated the Longview, Washington improvement bonds, it would have discovered the true facts, and that its failure so to do bars recovery. This is directly contrary to the rule of law which prevails in Iowa.

VII.

The Seventh Circuit Court of Appeals determined but one question, namely, that the evidence was insufficient to

justify submission of the case to the jury, and that the trial court should have directed a verdict for defendant. No other assignments of error were considered or decided.

A.

The instructions of the court upon the question of damages state correct rules of law for the guidance of the jury.

Stokes v. Converse, 153 Iowa 274, 133 N. W. 709, 711.
Whiting v. Price, et al., 51 N. E. 1084 (Mass.).
Hindman v. First National Bank, 112 Fed. 931.
Baumchen v. Donahoe, 215 Iowa 512, 242 N. W. 533.

B.

Evidence of events subsequent to 1930, in connection with the Longview local improvement bonds, was competent, and was properly admitted in evidence by the trial court, and the effect to be given such evidence was properly covered in the court's instructions to the jury.

Hotaling v. A. B. Leach & Co., 247 N. Y. 84, 159 N. E. 870.

C.

There was evidence before the jury justifying the verdict of Sixty-six Thousand One Hundred Fifty Dollars ($66,150).

Hotaling v. A. B. Leach & Co., 247 N. Y. 84, 159 N. E. 870.
Crandall v. A. B. Leach & Co., 223 N. Y. Supp. 127.
Paul v. Cameron, 256 N. W. 11 (Nebr.).
Hindman v. First National Bank, 112 Fed. 931.
Baumchen v. Donahoe, 215 Iowa 512, 242 N. W. 533.

ARGUMENT.

I.

The opinion of the Seventh Circuit Court of Appeals gave controlling effect to the "hedge clause" of the offering circular, and in such respect is without foundation in legal precedent or authority.

A reading of the opinion of the Seventh Circuit Court of Appeals demonstrates that that court gave controlling weight to the so-called "hedge clause" found in the offering circular, plaintiff's Exhibit "B-1." Thus, in the opinion of Circuit Judge Sparks, speaking for the court below, it is said:

> "As to the first two (representations as to the location of the industrial plants, and the frontage of the city upon the Columbia River) which we think constitute the only actual *misstatements* in the record, appellant (respondent) expressly guarded itself against liability for possible inaccuracy by the hedge clause in the prospectus, as set forth above * * *
>
> "Therefore, the hedge clause constituted a valid defense to the charge of misrepresentation as to the location of the plants and the river frontage, and the jury should have been so instructed."

Counsel for respondent, in the court below, urged that the hedge clause constituted a defense to all the charges of fraud pleaded by petitioner, but, in this court, they urge that the court below did not find that the hedge clause relieved respondent from liability for misrepresentations, falsely or recklessly made. Counsel have apparently shifted their position, and notwithstanding the decision of the Circuit Court of Appeals, which adopted their argument, now urge that the Circuit Court of Appeals did not give controlling weight to the hedge clause. A reading of the decision of the Circuit Court of Appeals demonstrates that that

court did regard the hedge clause as of controlling importance.

Counsel now say that the proper function and scope of the hedge clause was merely to advise petitioner that the statements contained in the circular were not being made by respondent of its own knowledge, but were based upon information furnished by others, and believed by respondent to be accurate.

The record demonstrates that the information embodied in the offering circular was neither furnished to respondent by others, nor was it believed by any officer of respondent to be an accurate and correct statement of the facts. The record shows that three vice presidents of respondent made five or six trips to Longview to investigate the various Long-Bell issues of bonds which respondent distributed between 1923 and 1930. None of these vice presidents denied knowledge of the location of the Longview corporate limits, or the industrial properties. The record shows that instead of entrusting the preparation of the bond circulars to officers who had knowledge of the situation, Mr. Simond, who had never been to Longview, was commissioned to prepare them. Mr. Simond does not claim that he was informed, or even supposed, that the Long-Bell, Weyerhaeuser, Longview Fibre and other industrial plants were within the City of Longview. No officer or employe of The Long-Bell Lumber Company ever gave him such information. He merely prepared the bond circulars, and forwarded them to Mr. Andrews, who now says that he found nothing wrong with them. This was the same Mr. Andrews who testified as a witness that no question existed in his mind as to the financial position of The Long-Bell Lumber Company in the summer of 1930, notwithstanding the demands of commercial banks that the Lumber Company form a new subsidiary corporation, and transfer thereto all of its liquid and unencumbered properties. (R. 351) Mr. Simond now says that when he was con-

fronted with a direct inquiry in October, 1930, as to whether the Long-Bell and Weyerhaeuser mills were within the City of Longview, he felt it necessary to wire the Long-Bell offices at Longview for the true facts. In 1927, in wiring the Minneapolis sales manager of respondent, Simond said concerning the local improvement bond issues:

> "We haven't the data, but with exception one or two districts, showing would probably be disappointing from point of population, area, valuations, etc., and for this reason we rely entirely on Long-Bell guarantee." (R. 80, 81)

On November 19, 1926, in response to an inquiry from the Philadelphia office of respondent, Simond wired:

> "District No. 11 is a sewer district, formed to complete sewer construction begun by city, and takes in most of the city."

The jury was amply justified, under the record, in finding that respondent and its officers did not actually believe the statements contained in the offering circular and the other exhibits. Under such circumstances, as we pointed out in our original brief, the question of respondent's liability for false and fraudulent statements was a question for determination by the jury, and not by the court.

II.

Petitioner has met the burden of establishing by a fair preponderance of the evidence the allegations of fraud.

At pages 41 to 45, inc., of their brief, counsel urge that fraud is never to be presumed, that it must be affirmatively established by clear and satisfactory evidence, and that in the application of these rules, the Circuit Court of Appeals properly determined that no actionable fraud on the part of respondent was shown. We concede, of course, that fraud

will not be presumed, that the burden of establishing fraud is upon him who asserts it, but we submit that petitioner has fully met this burden.

First, it is to be observed that every charge of fraud made against respondent by petitioner is supported by documentary evidence. It is established beyond controversy that respondent delivered the offering circular, and the other exhibits, to Hubbell for the purpose of inducing the purchase of the bonds. The writing of the Wood letters of May 14 and June 4, 1930, is admitted. The facts with reference to respondent's knowledge of the true financial condition of The Long-Bell Lumber Company were established largely by the admissions of respondent's executive officers, and by correspondence, which such officers admit was conducted over their own signatures. There is no dispute in this record as to the making of the representations. There is no substantial dispute concerning respondent's knowledge of the true financial condition of The Long-Bell Lumber Company. There is no dispute with reference to the positive misrepresentations concerning the location of the industrial plants and the frontage of the city upon the Columbia River. A fact question is presented as to respondent's knowledge of the location of the industrial properties, and the frontage of the city upon the Columbia. The jury in the trial court concluded that petitioner had met the burden imposed upon it by the court's instructions.

At page 45 of their brief, counsel urge that

> "All talk about respondent intentionally misstating the facts in its circular regarding Longview, is patently absurd."

Counsel for respondent say that it had not the slightest interest in misrepresenting any facts regarding the City of Longview. Respondent was an investment house,—the record shows, one of the nation's largest. It had many offices,

and it was engaged, among other things, in maintaining a market for the securities which it had sponsored and originally sold. The argument set forth on page 45 of Respondent's Brief was perhaps proper for consideration by a jury. It certainly has no place, in view of the admitted facts, in a brief before any appellate tribunal. We submit that the evidence of petitioner fully met every burden imposed upon it by law, and that the opinion of the Circuit Court of Appeals merely substitutes the judgment of that court for that of the jury below upon conflicting evidence.

III.

The furnishing of the January 1, 1930 Long-Bell Lumber Company financial statement and balance sheet, with no explanation that conditions therein shown had materially changed, within respondent's knowledge, the writing of the Wood letter of May 14, 1930, that petitioner had been furnished "substantially all the data," and the writing of the Wood letter of June 4, 1930, stressing the importance of Longview as a commercial center, and the financial strength of the Lumber Company, as indicated by the recent substantial retirement of its first mortgage bonds, are sufficient to carry to the jury the issue of respondent's fraud in indulging in half-truths with respect to the financial standing of the Lumber Company.

Under Division III of their brief, pages 46 to 61, inc., counsel for respondent urge that the record contains no proof that it indulged in any half-truths with respect to the financial condition of The Long-Bell Lumber Company. The Circuit Court of Appeals treated the case as presenting nothing more than silence on the part of respondent, not amounting to fraud.

Before proceeding to a consideration of the authorities cited in Respondent's brief, we desire to dispose of the con-

tention that there was no evidence from which the jury could properly find that respondent did indulge in half-truths with respect to the financial condition of the Lumber Company. We have pointed out, in our Brief, that after being shown the offering circular, Exhibit "B-1," Hubbell requested more information concerning the City of Longview, the property, and The Long-Bell Lumber Company. (R. 187, 188) In compliance with this request, respondent submitted to Hubbell the large mass of information, including the January 1, 1930 Long-Bell balance sheet. In submitting the balance sheet, respondent did not advise Hubbell that the conditions therein shown had materially changed by reason of the substantial operating losses suffered by the Lumber Company, and particularly, by reason of the demand of the commercial banks that the Lumber Company create a new subsidiary corporation. After Hubbell had sufficient time to examine the mass of data submitted, W od wrote the letter of May 14, 1930, Exhibit "B-24." In this letter Wood positively stated that he believed that Hubbell had "practically all the data covering the issue." This, as we have already pointed out, was a clear representation that petitioner had been furnished all the information in respondent's possession on the matter. Respondent, however, withheld all information possessed by its executive officers as to the true financial condition of the Lumber Company.

After the purchase of the $100,000 of these bonds, Wood, on June 4, 1930, again wrote Hubbell. (Plaintiff's Exhibit "B-40," R. 483) In this letter Wood discussed what he described as a rumor, but which the Long-Bell officers knew to be a fact, that trunk line railroads operating in the Pacific Northwest were about to acquire Long-Bell's railroad subsidiary. With respect to the transaction, Wood said:

> "This rather emphasizes not only the importance of this particular asset of The Long-Bell Lumber Company, but also the importance of Longview, Washington, it-

self. * * * Regardless of whether this does, or does not, take place, the reflection of Longview, Washington cannot be other than favorable.

Incidentally, I think you might be interested in knowing that within the past few days they have undertaken the retirement of a very substantial amount of Long-Bell Lumber Company Mortgage Bonds from funds which became available from the sale of capital assets not necessary to the successful operation of this Company."

The fact that a corporation is retiring its bonded indebtedness in substantial amounts, is one of the strongest indications of financial strength and solvency, and Hubbell so understood the Wood letter of June 4, 1930.

Was not Wood, in writing the letter of May 14, 1930, indulging in a half-truth when he stated that Hubbell already had "substantially all the data"? And, again, in writing the letter of June 4, soliciting the purchase of additional bonds by petitioner, did not Wood make the statements concerning the retirement of bonds for the purpose of leading Hubbell to believe that this was an indication of financial strength of the Lumber Company?

In our original brief we pointed out that 23 American Jurisprudence, Fraud and Deceit, Par. 94, states the rule, that

> "Very little in addition to non-disclosure of material facts is required to prevent the application of the general rule which renders mere silence non-actionable, and to make a party guilty of fraud."

Here respondent was not content with mere silence. As we have pointed out, it did indulge in half-truths with respect to the financial condition of the Lumber Company, which led petitioner's officers to believe that the facts were vastly different from those which respondent knew to be true. In view of the record, a jury question is presented on this phase of the case.

The first case relied upon by respondent in support of its contention that it was under no obligation to disclose the true financial condition of The Long-Bell Lumber Company, is that of *Gamet v. Haas*, 165 Iowa 565, 146 N. W. 465. There plaintiff brought an action for the recovery of damages, based on fraud in the sale of stock of a corporation known as the Woodbine Milling Company. The property of the corporation consisted of a two story flouring mill at Woodbine, Iowa, where both plaintiff and defendant resided. Plaintiff's son-in-law was the miller in charge of the operation of the corporation's plant. The only charges of fraud made by plaintiff were that defendant did not disclose that the corporation owed a $3,400 debt covering a part of the purchase price of its property. No inquiry was made by plaintiff for information concerning the financial condition or assets of the corporation, and no such information was furnished by the defendant. The Iowa Supreme Court held that the trial court had properly directed a verdict for defendant, and in the course of the opinion, the court said:

> "The parties appear to have assumed mutual knowledge or information, as well they might, for plaintiff's son-in-law was in charge of the property as miller, and plaintiff was familiar with the enterprise. The record is without evidence from which the inference of bad faith might be drawn. As there was no proof of fraudulent representations, it is unnecessary to inquire into the charge of having fraudulently concealed these."

In *Boileau v. Records & Breen*, 165 Iowa 134, 144 N. W. 336, it appeared that defendants held a tax deed covering forty-eight acres of land, which one Kesterson, a former titleholder, occupied. Both parties were aware that Kesterson was in actual, physical possession of the property. Possession of real estate by a third party, under the Iowa law, is constructive notice to the world of his actual rights. De-

fendants traded the tax deed to plaintiff for other properties. Plaintiff paid about one-quarter of the actual market value of the real estate, if the title were good. Plaintiff was a real estate dealer, and was thoroughly conversant with land values in the community. He knew that a suit had been brought against Kesterson to recover possession of the real estate, but did not know whether it had been disposed of by the court where it was pending. After acquiring the tax deed, plaintiff attempted to dispossess Kesterson, but he was held of unsound mind, and the tax deed was held void. The Iowa Supreme Court held that plaintiff had both actual and constructive notice of Kesterson's rights in the property; that he gave a wholly inadequate consideration for the real estate, and that the representation that the tax deed was "regular and in accordance with the laws and requirements of Iowa," was not a fraudulent representation as to the state of the title. There is nothing in that authority which is of the slightest value in determining the question now presented to this court.

The Iowa case of *Sherman v. Harbin*, 125 Iowa 174, 100 N. W. 629, involved fraudulent concealment of the practices engaged in by an officer of a corporation, and is clearly not in point here.

We have already pointed out the half-truths in which respondent indulged. At page 50 of their brief, counsel urge that respondent furnished to petitioner exactly what it asked for, namely the January 1, 1930 financial statement and balance sheet of The Long-Bell Lumber Company. We have already pointed out that Hubbell's request was not specific, but was for additional information concerning The Long-Bell Lumber Company, and the property at Longview. It was in response to this request that the financial statement and report were submitted, with no intimation that the situation therein disclosed had so materially changed that the Lumber Company could only keep afloat by creating a new

subsidiary corporation, and transferring to it all of its liquid assets and unencumbered properties.

Petitioner's charge of fraud with respect to the financial condition of The Long-Bell Lumber Company rests not upon mere failure to disclose, as the Circuit Court of Appeals said, but upon the furnishing of information essentially false and misleading in character, coupled with the statement that such information constituted "substantially all the data covering the issue." The evidence presented an issue for determination by the jury.

IV.

The rule of caveat emptor does not apply in Iowa in all cases in which the parties are dealing at arm's length. The situation of the parties, the subject matter in hand, the knowledge, and means of knowledge of each, are to be taken into account upon the question of fraud. This case, therefore, is not one in which caveat emptor may be applied.

At pages 62-65 of their brief, counsel urge that in Iowa the rule of *caveat emptor* is applied to all transactions where no fiduciary relationship is present, and there is no evidence of fraudulent concealment. This is not a correct statement of the Iowa rule. The only cases cited in support of the statement are those of *Gamet v. Haas*, 165 Iowa 565, 146 N. W. 465, which has already been considered in the preceding division of this argument, and *Wagner v. Standard Seed Tester Co.*, 194 Iowa 1330, 191 N. W. 314. That was an equity action, by a stockholder, seeking cancellation of his certificates of stock, and repayment of the amount paid to the corporation therefor. Plaintiff alleged that he purchased ten shares of the preferred stock of the corporation, but his petition was not filed until more than five years after the original transaction, and the sole question discussed, and determined, by the Iowa Supreme Court, is with respect to

the statute of limitations. The court held that a demurrer to the petition of plaintiff was properly sustained, and affirmed the judgment of the court below.

As we pointed out in our original brief, the Iowa rule is that in determining whether there are actionable false and fraudulent representations, consideration must be given to the situation of the parties, the matters with which they are dealing, the subject matter in hand, the knowledge, and means of knowledge of the facts. Here respondent, a nation-wide investment house, was offering the Longview local improvement securities as desirable investments for the policy reserves of a life insurance company. Respondent was well known to petitioner as a large and reputable concern. Petitioner properly assumed that respondent had made some measure of investigation concerning the securities which it was offering, and relied upon its statements with respect thereto. Under such circumstances, no court, except the Seventh Circuit Court of Appeals in this case, has ever in effect held that the rule of *caveat emptor* may properly be applied to purchases of securities of the type and character here involved.

V.

The trial court properly ruled that the statements of the Wood letter of May 14, 1930, that

> *"We believe you have before you practically all the data," and*
>
> *"You will observe that the city has no funded debt other than these improvement bonds,"*

constituted representations that petitioner had been furnished all facts within respondent's knowledge, that there were no other similar securities outstanding, and that such representations were material. Whether such representa-

tions were false, and were relied upon by petitioner, were properly submitted to the jury by the trial court, and the determination of the Seventh Circuit Court of Appeals, that the letter was of "trivial materiality," substituted the judgment of the court for that of the jury on the weight of the evidence.

Under subdivision V of their brief, pages 65-71, counsel for respondent urge that since the Wood letter of May 14, 1930, was a written instrument, its construction as a representation involved a law question to be determined by the court. They further urge that the evidence shows that petitioner

> "Did not rely on the statement (of the Wood letter) as a representation that there were no outstanding bonds of any other municipal body which were a charge upon lands within the improvement districts."

We agree, of course, that the proper construction of a written instrument presents a question of law for the court. We agree further that the materiality of a particular representation, whether written or oral, in fraud cases presents a question of law to be determined by the court, in the first instance. But, the question as to whether a particular representation was relied upon, and the extent of such reliance, presents an issue of fact for determination by the jury. Where the facts are in dispute, or conflicting inferences may be drawn from the testimony, no court has a right to substitute its judgment for that of the jury upon the weight to be accorded any item of evidence.

In the Wood letter, Exhibit "B-24," Hubbell was directly and specifically told:

> "We believe you have before you practically all the data covering this issue of bonds, but if you have any questions in mind, we shall be pleased, indeed, to have you call Mr. Kelley or this office for anything you may

need. You observe, of course, that this city has no funded debt, other than these improvement bonds, and that the original debt has been materially reduced through retirement and maturity."

The language of this letter is plain and unambiguous. It could mean but one thing, namely,

"We have furnished you all the information in our possession concerning the bonds, but if you want more, we shall try to supply it."

The trial court properly ruled that this letter spoke for itself, and that it constituted a representation that respondent had already furnished petitioner "substantially all the data in its possession." The trial court also properly submitted to the jury the question whether petitioner relied upon such representation, and the extent of such reliance, as a fact issue.

Counsel complain that Hubbell did not testify as to his construction of the Wood letter, and his reliance upon its statements. The statement of the evidence in this case was prepared by counsel for respondent, and present counsel for petitioner did not see it before the preparation of the printed record in the Circuit Court of Appeals. The fact is, as counsel well know, that upon the trial, questions were propounded to Hubbell, calling for his construction of the Wood letter, and that the trial court sustained respondent's objections thereto. The trial court ruled that the Wood letter "spoke for itself," held that it did constitute a material representation, and submitted it to the jury.

The Circuit Court of Appeals holds that because of Hubbell's testimony that it was not his usual custom in 1930 to inquire into the extent of overlapping municipal issues, the Wood letter, while a careless statement for respondent to make, was of "trivial materiality." (R. 668) That court did not hold that the Wood letter should have been ex-

cluded from evidence, but said merely that the letter and its implications were of "trivial materiality." In other words, the Seventh Circuit Court of Appeals did not hold the letter inadmissible, and did not hold that the letter was not a representation that the Longview improvement bonds constituted the only outstanding securities of that type and character in Longview, but held that such representations were not relied upon, and were not entitled to be relied upon by petitioner. In this respect, it seems to us very plain that the Circuit Court of Appeals has merely substituted its judgment for that of the jury below upon a fact question.

At pages 66 and 67 of their brief, counsel urge that neither Wood, in writing the letter, nor Hubbell, in reading it, thought that the sentence in question, "had any reference to the Cowlitz County diking district bonds, or to the bonds of any other separate municipality." We are unable to see how such construction can be placed upon the plain language used by Wood in the letter. Here was a definite, positive statement that the city had no funded debt "other than these improvement bonds." Is the situation changed any by the conceded fact that Hubbell did not customarily make inquiry as to overlapping issues? Certainly not. Here was a definite, positive statement that the city had no funded debt "other than these bonds." Hubbell knew that these were not general obligation bonds; that they were no part of the funded debt of the City of Longview in the technical sense, but he accepted the Wood letter in the way in which it apparently was intended to be read, namely, that this issue was the only one outstanding at Longview.

Counsel for respondent cite the case of *Readinger v. Rorick*, 92 Fed. (2d) 140, in support of their contention that the Wood letter of May 14 does not constitute a misrepresentation as to the extent of the outstanding bonds. The bonds involved in that case were issued by an irrigation district, and the offering circular recited that the total

bonded indebtedness of the district was $295,000. The statement was correct, but because of overlapping municipalities, that figure did not measure the total indebtedness against the properties embraced within the district. As we pointed out in our original brief, had Wood merely said in his letter of May 14 that the city had no funded debt, Hubbell would have clearly understood what he meant, for the city, it appears, had no general obligation bonds outstanding. But, when Wood went further, and stated that the city had no funded debt "other than these improvement bonds," the usual and ordinary meaning which would be applied thereto by persons familiar with the purchase of bonds, was, that, there were no other bond issues of similar character outstanding at Longview. In this respect, the representation was clearly false. The representation was a material one. A jury question was presented as to the extent of Hubbell's reliance thereon, and that question was properly submitted to the jury by the trial court under proper instructions. We submit that the Circuit Court of Appeals exceeded its powers, as a court, when it undertook to substitute its own judgment as to the sufficiency of the representation for that of the jury, which apparently resolved that question in favor of petitioner.

VI.

A mere reading of the opinion of the Seventh Circuit Court of Appeals demonstrates that it was predicated, in large measure, upon the thought that had petitioner adequately investigated the Longview improvement bonds, it would have discovered the true facts, and that its failure so to do bars recovery. This is directly contrary to the rule of law which prevails in Iowa.

On pages 71-73 of their brief, counsel for respondent urge that the Circuit Court of Appeals did not decide that

petitioner's negligence barred recovery for fraud. In our original brief we pointed out in considerable detail the repeated statements found in the opinion of the Seventh Circuit Court of Appeals, to the effect that had petitioner made an adequate investigation of the fact situation surrounding the bonds, it would have learned everything of which it now complains, and that "there is nothing to suggest why it could not have found them with equal facility before it purchased the bonds." (R. 671)

The quotations from the opinion set forth on pages 64 and 65 of our original brief, make it plain that the Seventh Circuit Court of Appeals was very largely influenced in arriving at the decision that it did by the belief that petitioner had not used adequate care to protect itself in the transaction. No amount of argument can change the plain language of the opinion below.

Counsel for respondent now admit that the issue of contributory negligence, under the Iowa law, was not in the case, and that petitioner's failure to conduct an adequate investigation, if established, constitutes no defense. Counsel's concession, however, cannot change the fact that the Circuit Court of Appeals for the Seventh Circuit did, in large measure, predicate its decision upon petitioner's failure to protect itself by adequate investigation. The brief of respondent on this division of the case merely emphasizes the error into which the Circuit Court of Appeals fell.

VII.

The Seventh Circuit Court of Appeals determined but one question, namely, that the evidence was insufficient to justify submission of the case to the jury, and that the trial court should have directed a verdict for defendant. No other assignments of error were considered or decided.

Under division VII, pages 73-83, inc., of their brief, counsel for respondent urge that the judgment of the Circuit Court of Appeals reversing the trial court should be sustained, even though this court concludes that the evidence is sufficient to justify submission of the case to the jury. Counsel urge that there was error in the instructions to the jury, that the trial court erred in admitting evidence, and that, in any event, there was no evidence before the jury from which it could determine the amount of petitioner's damages. It is to be observed that the Circuit Court of Appeals has never passed upon, or considered, these questions. Since the Seventh Circuit Court of Appeals did not specifically pass upon such questions, we doubt that this court will desire to consider or decide the questions thus raised. We have no objection, however, to meeting the questions, if the court feels that a determination thereof is proper at this time.

A.

The instructions of the court upon the question of damages state correct rules of law for the guidance of the jury.

The trial court in its instructions told the jury that if it found plaintiff (petitioner) entitled to recover damages, then

> "The measure of plaintiff's damages is the difference, if any, between the actual value which the $266,000 par value of Longview improvement district

bonds now held by petitioner had at the respective dates when the same were purchased by the petitioner from respondent, and the actual value which said bonds would have had on said dates if they had been as represented, if and to the extent that you find from the evidence said bonds were in fact misrepresented by the defendant (respondent).". (R. 404)

The measure of damages so given to the jury was in accord with respondent's requested instruction no. 9. (R. 399) The measure of damages for fraud in the sale of property, in Iowa, is the difference between the actual inherent value of such property, as it actually was at the time of sale, and its value had it been as represented. *Stokes v. Converse*, 153 Iowa 274, 133 N. W. 709, 711.

After stating the correct measure of damages, the court gave to the jury that portion concerning which complaint is made, appearing at R. pg. 404, and set forth in the footnote at the bottom of page 75 of respondent's brief. Counsel complain that the jury was not limited to a consideration of only those facts and circumstances "relating to the value of the bonds at the time they were acquired by petitioner as was disclosed by the evidence bearing on the issue of damages." This is a purely hypercritical criticism of the instruction, for the jury were expressly told to take into consideration the facts and circumstances "as shown by the evidence, the local conditions then existing at Longview so far as shown by the evidence, the true financial condition of the Lumber Company and its subsidiaries, and all other facts and circumstances then existing, as shown by the evidence."

The cases of *Garvey v. Chicago Railways Co.*, 339 Ill. 278, 171 N. E. 271; *Benham v. Heath*, 77 Ind. App. 91, 133 N. E. 179, and *Gallagher v. Singer Sewing Machine Co.*, 177 Ill. App. 198, do not support counsel's criticism of this instruction.

At pages 76-78, inc. of their brief, counsel vigorously attack the instruction of the court by which the jury were told that in determining the fair actual value of the local improvement bonds at the times the plaintiff acquired same, they might take into consideration subsequent events and developments.

No exception to the instructions upon the ground now urged was taken at the time of the trial. The only exception addressed to the instruction on damages was as follows:

> "Mr. Johnston: I except to the modification of defendant's Instruction No. 9 by the addition thereto of the matter relating to the right of the jury to consider subsequent facts and circumstances in arriving at their determination of value as of 1930 when these bonds were sold, on the ground that such evidence should not be considered by the jury, and is not a proper element of damage." (R. 407)

It is elementary, of course, that a ground of exception to an instruction may not be urged upon appeal, which was not specifically called to the attention of the trial court. The claim now advanced by counsel, that by the instruction in question the jury was permitted to consider the effects of the depression, is not open to respondent, because no exception was taken upon that ground at the time of the trial.

Furthermore, the instruction which directed the jury to take into account subsequent developments, which were the result of conditions then existing, stated a correct rule of law. In *Whiting v. Price, et al.*, 51 N. E. 1084, the action was based on fraud in the sale of a corporate bond, which was represented as secured by a first mortgage upon real estate and franchises of a power company. The court instructed the jury that in determining the actual value of the bond, they might properly take into consideration "circumstances which have transpired, as shown by the evi-

dence." The evidence showed that the issuing company had been placed in receivership, and the bond had become practically worthless. The Massachusetts Supreme Court, in an opinion delivered by Mr. Justice Holmes, who later served with such distinction on this court, sustained the instruction, saying:

> "We think that what was added to that express direction merely amounted to allowing the jury to take subsequent events into account in arriving at the two values at the time of the purchase, which the jury were directed to compare. We cannot say that this was wrong. The market value of the bond at the time of the sale may have been illusory, because the public also may have been deceived. The statement which we have quoted, appearing in the bond of an electric light company, certainly conveys the impression that it has a plant and property, which naturally would include land. Or, if it be answered that the public, which makes market prices generally, looks a little further than such vague words, the question remains, what would have been the value of a bond adequately secured, when the public were willing to pay for one depending so far upon speculation for its value that subsequent events have shown it to be worthless? The subsequent events may be likened to the coming out of a latent disease existing in a horse at the time of a fraudulent sale, to take an example put by Cockburn, C. J., in *Twycross v. Grant*, 2 C. P. Div. 469, 544."

The federal courts have always followed a similar rule. In the case of *Hindman v. First National Bank*, 112 Fed. 931, the Sixth Circuit Court of Appeals, speaking by Judge Lurton, later an associate justice of this court, said:

> "Where the subject of the purchase is tangible property, the real actual value and the market value are for the most part one and the same. But market sales of corporation shares may not be any real indication of real intrinsic value.
>
> The true inquiry will be, what was the real, intrinsic value of the shares bought by plaintiff, for his dam-

ages must be reduced by deducting that value. Whatever tended to show the want of intrinsic value of shares in a company in the circumstances of this company at the time of the purchase was competent evidence."

Iowa follows the same rule. Thus, in *Baumchen v. Donahoe*, 215 Iowa 512, 242 N. W. 533, plaintiff was induced to subscribe to stock of a reorganized bank, by representations that all questionable paper in the original bank had been eliminated. About two years after plaintiff purchased his stock, the reorganized bank went into receivership, and was liquidated. The difficulties were largely due to unsatisfactory paper which proved worthless, and which had not been eliminated in the first reorganization. Plaintiff was required to pay an assessment equalling the par value of his shares. The trial court submitted the case to the jury, instructing that plaintiff might recover the amount of his original purchase price, plus the amount of the assessment which plaintiff was compelled to pay, if the plaintiff established "by a preponderance of the evidence that the assessment was directly caused by the condition of the bank at the time he purchased said stock, and was not caused by anything that took place in the intervening time." The Iowa Supreme Court affirmed the judgment of the trial court, which awarded plaintiff not only the amount paid for his stock, but the amount of the additional assessment thereon.

In view of these authorities, we submit that the attack made on the instructions of the trial court, merely because thereby the jury were permitted to take into consideration subsequent events, must fail.

VII.

B.

Evidence of events subsequent to 1930, in connection with the Longview local improvement bonds, was competent, and was properly admitted by the trial court, and the effect to be given such evidence was properly covered in the court's instructions to the jury.

At pages 79-81, inc., of their brief, counsel urge that the trial court received incompetent evidence. The evidence as to which complaint is made is summarized under six divisions set forth at pages 80 and 81 of their brief. This evidence was all material and competent, and properly received by the trial court. It is almost universally held in actions of this character, that the amount received by a plaintiff on a foreclosure action may be shown in evidence. See the leading case of *Hotaling v. A. B. Leach & Co.*, 247 N. Y. 84, 159 N. E. 870. So, it was competent for petitioner to show that The Long-Bell Lumber Company was relieved of its guarantee of the local improvement bonds by proceedings under Section 77-B of the Bankruptcy Act, and that by virtue of the plan of reorganization approved by the court in that proceeding, petitioner received in lieu of such guarantee, for each $1,000 bond, slightly more than eight shares of common stock in the reorganized corporation. The value of this stock is likewise shown and tendered as a credit upon petitioner's claim.

The next general class of evidence which it is claimed was improperly received by the trial court related to certain proceedings had in Cowlitz County, Washington in the years 1937 and 1938, by which the lien of unpaid general taxes was foreclosed as to the lands embraced in the local improvement districts, and thereby the lien of the local improvement district assessments was completely wiped

out. The court will recall that The Long-Bell Lumber Company and its subsidiaries paid the local improvement assessments falling due in the year 1930, but defaulted upon those falling due in 1931 and subsequent years. The Lumber Company failed to pay its general taxes due in 1932, and this default led to tax foreclosure proceedings, which resulted in a tax deed covering more than sixty per cent in area of the Longview property. This evidence was competent for several purposes. It was competent to show that the lands were so heavily burdened with diking and local improvement district assessments that the owners of the property, shortly after the bonds were purchased by petitioner, elected not to pay even the general taxes thereon. In *Hindman v. First National Bank*, 112 Fed. 931, the Circuit Court of Appeals for the Sixth Circuit pointed out that the only way by which the actual, inherent value of securities purchased at a particular time may be shown, is by a consideration of subsequent events, and developments, which are the direct result of conditions then existing. All evidence of subsequent events received by the trial court tended to show the want of intrinsic value in the securities at the time of the sale, and was competent for that purpose.

The last item of evidence which it is claimed the trial court improperly received, was a supplement to the 70th Annual Report of petitioner to its policyholders, containing a list of the bond investments held by petitioner on December 31, 1936, and the values at which the bonds were carried upon the books of petitioner on said date. This evidence was not offered, as counsel would have the court believe, by petitioner, for the purpose of showing values, but merely to meet certain evidence which was brought out first in cross examination of F. W. Hubbell, petitioner's vice president and treasurer. While Mr. Hubbell was on the stand under cross examination, counsel for respondent de-

veloped that he had verified both the original and amended complaint in the action, in which certain statements were made as to the intrinsic value of the Longview local improvement securities. Following these inquiries, in an effort to impeach Hubbell, and to place him in a questionable light before the jury, counsel for respondent presented to Hubbell defendant's Exhibit "8," which was a supplement to the 69th Annual Report of petitioner to its policyholders, as of December 31, 1935. This report disclosed that petitioner owned on that date $272,000 par value of Longview improvement bonds, carried on its books at a valuation of $231,200. (R. 202)

In order to meet the effect of the cross examination of Hubbell, counsel for petitioner, upon redirect examination, questioned him concerning the methods followed by petitioner in determining the book value of securities. Hubbell testified that the book values of securities were regulated by instructions of the various insurance departments, and that barring clerical errors, petitioner undertook to comply with such instructions. Plaintiff's Exhibit "B-50" and Exhibit "B-51" were then offered in evidence, which disclosed that the National Association of Insurance Commissioners' Convention treated the Longview improvement bonds in 1935 as current, and permitted them to be carried on the books at an amortized value. As of December 31, 1936, the Insurance Commissioners' Convention prescribed a valuation of "ten flat," meaning ten per cent of the par value, without accrued interest. The 70th Annual Report of petitioner to its policyholders, and the 72nd Annual Report disclosed that petitioner was carrying the $266,000 of Longview bonds on December 31, 1936, at a valuation of $26,600, and on December 31, 1938 at $18,620.

These exhibits were offered and received only for the purpose of meeting the inferences left in the minds of the jury by the cross examination of Hubbell, and the use of

the 1935 report to policyholders, defendant's Exhibit "8".

By his cross examination, counsel for respondent sought to create the impression in the minds of the jurors that in December, 1935, petitioner regarded the bonds as worth substantially more than it had alleged in its original complaint, or that it was deliberately misrepresenting the value of its assets to its policyholders. Counsel for respondent first brought into the case, upon his cross examination of Hubbell, the element of book value of the Longview improvement bonds. Upon redirect examination it was perfectly competent and proper for petitioner to show the manner in which the statement, Exhibit "8" was prepared, and the manner in which the valuations there shown were arrived at. It was likewise proper for petitioner to correct the impression created by the cross examination, that petitioner was misrepresenting the value of its assets in its reports to its policyholders. There is nothing in the admission of these exhibits of which respondent may justly complain. The whole matter was clearly within the discretion of the trial court. Respondent may not now complain of the admission of these exhibits, which were offered merely for the purpose of explaining and clarifying a situation which was first inquired into on cross examination of petitioner's vice president and treasurer.

VII.

C.

There was evidence before the jury justifying the verdict of Sixty-six Thousand One Hundred Fifty Dollars ($66,150).

At pages 81-83, inc., of their brief, counsel urge that there was no evidence before the jury enabling it to determine the amount of petitioner's damage, and that even

though all other contentions fail, the judgment of the Circuit Court of Appeals reversing the trial court should be sustained on this ground alone. This contention, upon examination, proves to be without support in the record.

The local improvement bonds were never listed upon any exchange. The market for such securities was made and controlled by respondent. That this was true, particularly of the local improvement bonds, is amply demonstrated by the record. Harold L. Stuart, respondent's president, on February 28, 1929, wrote the president of the Lumber Company, in which he made claim for $75,000 for services, in bringing about an improvement in the market position of Long-Bell's securities. In this letter, referring to the retirement of Long-Bell mortgage bonds under the sinking fund provisions of the mortgage, Stuart said:

> "We shall be very pleased to act for you in getting these bonds in and there is no question but what we can do better for you than anybody else, because we know where the bonds are. I also took the liberty of suggesting to you that, if you ask us to do this, you should not ask anybody else to work on these bonds, as the result could only be expensive to the Company. In the last analysis we are the market on Long-Bell securities, except possibly very small amounts, and you can understand how quickly we feel a movement in Long-Bell bonds when the fact that you had spoken to a Kansas City dealer about them was immediately reflected in our office here." (R. 432)

During the earlier months of 1930, respondent was shown to have purchased a number of the Longview improvement bonds at prices ranging from 95 to 98. In October, 1930, respondent purchased a $200,000 block of the bonds from B. M. Baruch of New York, at a price of 89. (R. 285-287) These facts amply demonstrate that there was no real market on the Longview improvement bonds, except that made by respondent in purchasing and resel-

ling the securities. Respondent completely controlled this market, and, in fact, fixed the prices.

There was a large volume of evidence before the jury bearing on the question of damages, and that body was able to, and did, determine the value of the Longview bonds, had they been as represented, and also their actual, inherent value at the various times they were purchased by petitioner. There was ample evidence from which the jury could properly have concluded that had the bonds been as represented, they would have been worth approximately par. The price paid for a security, under particular representations, may be considered by the jury in determining its value, had it been as represented. The first $100,000 of Longview improvement bonds acquired by petitioner were exchanged for a like amount of Louisiana State Highway Bonds maturing in the early part of 1931. The Louisiana bonds were shown to have been 5% coupon bonds, and were worth slightly in excess of par on the market in May, 1930. The other large transaction consummated between the parties involved an exchange of $200,000 Chicago Tax Anticipation Warrants for a like amount of Longview improvement bonds on October 16, 1930. The Chicago Tax Anticipation Warrants then had a value of slightly above par. They bore 6% interest, and were payable out of the 1929 tax revenues of the City of Chicago, as collected. (R. 273)

The evidence shows that the highest grade municipal securities in May, 1930, and in October of the same year, were selling in the market at prices to yield the purchaser an interest return of 4½%, or slightly above. (R. 186) The Longview improvement bonds were not general obligation bonds payable from general tax revenues, but solely from the proceeds of special assessments levied against benefited real estate, and from the guarantee of The Long-Bell Lumber Company. In view of the record, we submit that

the evidence was amply sufficient to justify a jury in concluding that had the bonds been as represented, their market value would have been approximately par. The bonds purchased by petitioner for cash were bought at 99 3/4.

The jury likewise had before it a large volume of testimony from which it could properly determine the actual, inherent value of the Longview improvement bonds on the dates they were purchased. Counsel for respondent, in their brief, apparently take the position that petitioner was under the obligation of introducing so-called "expert testimony" to show the actual, inherent value of the bonds, rather than to show, as petitioner did, the circumstances surrounding the bonds, and the factors entering into the true value thereof, and permit the jury to fix the value. We are aware of no rule of law that requires "expert" testimony as a necessary prerequisite to the recovery of damages by a defrauded purchaser.

There were two elements which gave the Longview improvement bonds value in the summer and fall months of 1930. The first of these was the assessments upon the Longview real estate, from which the bonds, by their terms, were payable, and second, the unconditional guarantee of The Long-Bell Lumber Company. The jury had before it a large amount of evidence bearing upon the value of both factors. The evidence disclosed in great detail the local conditions existing at Longview in the summer and fall of 1930. The topography of the land, the character of the soil, the location of dikes and ditches, the location of industries and business establishments, the manner in which the city had been laid out, the extent of the improvements constructed, and the prospects for future expansion, were all shown in considerable detail in the testimony of Horace A. Dryer. (R. 274-284). The amounts of the Longview improvement bonds outstanding in each of the districts were shown. The amounts of the assessments upon typical lots

in each of the various districts were disclosed, as well as the amounts of the assessments upon the same lots for the diking district.

The evidence disclosed that the Lumber Company had engaged in an intensive sales campaign to dispose of its Longview real estate for a number of years prior to 1930. Notwithstanding the activities of this real estate organization, by April, 1928, the sales of lots had so declined, that, in that month, new sales were slightly less than $15,000, while forfeitures of existing contracts amounted to $17,000. The evidence discloses that real estate activity at Longview declined as the depression in the lumber business became more evident in 1928, 1929 and 1930. It was very clearly established that by May or June, 1930, except for a few desirable lots, practically all of the vacant, unimproved real estate in Longview could not be sold at prices equal to the combined diking and local improvement district assessments.

Under these conditions, it is obvious, just as Mr. Dryer testified, that in May and June, 1930, there was little or no prospect that the vacant, unimproved areas of Longview real estate could be marketed at any figure. About one-third the area of Longview was platted into lots and blocks, and two-thirds was mere unplatted acreage. There were some 5,000 platted lots embraced within Longview. On December 31, 1927, 2,629 of these lots had been sold, 2,062 were unsold, and 419 were reserved from sale. The lots sold included those sold to R. A. Long, personally, so that the number sold to individual investors was somewhat less than half of the number of lots then platted, or less than one-sixth of the total unimproved area within the Longview city limits.

The jury had before it aerial photographs of Longview, taken, in the year 1930, about the times petitioner's bonds were purchased. These photographs covered practically

every part of the city, and graphically illustrated the local conditions, the great distances separating the various portions of the city, and the intermediate vacant tracts of wholly unimproved land.

The jury had before it the fact that there were large areas of wholly unimproved property, which had been subjected to very burdensome assessments in Districts Nos. 11 and 19, as well as in the diking district. Exhibit "P-49", one of the exhibits certified to this court, discloses that the assessments, upon various unimproved tracts in the diking district alone, varied from $200 to $2,500 per acre. The Long-Bell Lumber Company, as the owner of the great bulk of the real estate within the City of Longview, and guarantor of the bonds, was in practical effect, the only source from which the bonds could be paid.

In addition to all this evidence with respect to the local conditions at Longview, the jury had before it a considerable volume of testimony bearing upon the value of the Long-Bell guarantee in the months of May to October, 1930. When the Longview improvement bonds were first presented to petitioner, The Long-Bell Lumber Company was actively considering the formation of the Sales Corporation, to which all of its liquid, unencumbered assets were subsequently transferred. The jury had before it the fact that Long-Bell was suffering operating losses at the rate of approximately $100,000 per month during the first six months of 1930. The Longview local improvement bonds, by their terms, did not mature until 1937, 1938 and 1939. From the evidence, the jury was justified in concluding that the Long-Bell guarantee of payment at the maturity of the bonds some seven to nine years distant, while giving some additional value to the bonds, fell short of indicating the probability of ultimate payment.

The jury had before it the evidence that because of Long-Bell's top-heavy structure of bonded and guaranteed

debt, it was forced into bankruptcy under the provisions of Section 77-B of the Bankruptcy Act in 1934. Under this proceeding the Long-Bell guarantee was wiped out, and in lieu thereof, for each $1,000 bond, the local improvement bondholders received only eight shares of common stock in the reorganized corporation. When the reorganization plan became effective in December, 1935, the value of this stock was approximately $10 per share. As petitioner owned $266,000 par value of these bonds, it was entitled to receive approximately 2,300 shares of new Long-Bell stock, having a value at that time of approximately $23,000. The jury, of course, had a right to find that the amount received in the reorganization proceedings in 1935 was not conclusive as to the actual value of the Long-Bell guarantee in May and October, 1930.

The jury had before it the fact that practically every local improvement district assessment upon unimproved property in Longview had been wiped out by the foreclosure for general taxes, which had culminated in the tax deed. The jury had before it the amounts remaining in the hands of the City Treasurer of Longview in each of the local improvement district funds, which showed that there was no prospect that any further bonds could, or would, be retired through payments of additional assessments.

The Long-Bell guarantee had been supplanted by common stock in the reorganized Long-Bell Corporation, which had a value of approximately $23,000. Petitioner's loss, as the result of its investment in Longview improvement bonds, therefore, was at least $240,000. The verdict of the jury was for $66,150. It is obvious that the jury was not actuated by any feeling of passion or prejudice, for it might well have returned a much larger verdict. It was for the jury to determine the amount of petitioner's damage. Respondent was indeed fortunate that the verdict was not for a substantially greater amount.

In recent years the courts have almost universally recognized that in cases of this kind, particularly where the market is made or controlled by the investment house issuing the bonds, the prices at which bonds sell, shortly after their issue, have little or no relation to the actual, inherent value of such securities. The rule is now well established, in the majority of jurisdictions, that where the facts concerning an issue of bonds, which have been misrepresented, are placed before the jury, that body may properly determine from subsequent events, the actual, inherent value of the securities at the time of their sale, and that under such circumstances, the evidence is sufficient to sustain a verdict for plaintiff.

Perhaps the leading case in this country on this question is that of *Hotaling v. A. B. Leach & Co.*, 247 N. Y. 84, 159 N. E. 870. In that case it appeared that plaintiff had purchased from the defendant, an investment house, a 7% bond of the National Oil Company, at a price slightly below par. The oil company was a holding concern, which owned refineries, transportation and marketing facilities. A depression occurred in the petroleum business shortly after the bonds were issued, and in about one year after the bonds were sold, the company went into receivership; its properties were sold at foreclosure sale, and a purely nominal sum was realized therefrom by the bondholders. The case was tried to the court without a jury, which rendered judgment for the amount paid for the bonds, less the amount realized from the foreclosure sale. Leach & Co. appealed. It conceded the sufficiency of the evidence on the issue of fraud, but attacked the judgment solely on the ground that the evidence was insufficient to justify any award of damages. The New York Court of Appeals and Errors, in an exhaustive opinion by Judge Lehman, held the evidence sufficient to sustain the award of the trial court, and affirmed the judgment. In the course of the opinion, the court said:

"In the present case the question is complicated by two circumstances. The property purchased is a bond, a chose in action whose intrinsic value is dependent solely upon the debtor's ability to pay when payment becomes due, and in addition the bond was recommended as an investment and defendant was informed that it was bought for that purpose. Even if we had evidence upon which a definite estimate might be made of the value of the company's property which was covered by the trust indenture and constituted security for the bond issue, we should not be able to fix with certainty the value of the bond. The oil company held the stock of subsidiary companies which in turn owned the tangible assets. The stock of the subsidiary companies was pledged, their tangible assets were still at the risk of the business. Probability of payment of the bond issue depended primarily upon the success of the business and its efficient management. Though the company might not have failed if conditions in the oil trade had not become disturbed, there is room for inference upon this record that these disturbed conditions would not have caused the failure if the enthusiastic statements of the value of the company's assets contained in the circular had been true. On the other hand, if a complete and accurate picture had been given of the oil company's position, an expectant investor might have hesitated and drawn back with a reasonable fear that any adverse change in business conditions would bring ruin to the company. That ruin came with change of conditions. The effect of the representations of the defendant did not cease with plaintiff's purchase. He continued to hold the bond for investment in accordance with the defendant's recommendation. Loss of his investment followed because the weakness of the company had been concealed from him by defendant.

* * * The loss proximately caused by the defendant's fraud is the difference between the price he paid and the value of what he received when put to the use contemplated by the parties. In this case that value must be determined in the light of subsequent events. As long as the fraud continued to operate and to induce the continued holding of the bond, all loss flowing

naturally from that fraud may be regarded as its proximate result. Change of conditions may have been a subsidiary cause; it was not an independent cause. The loss sustained is directly traceable to the original misrepresentation of the character of the investment the plaintiff was induced to make."

The court concluded its opinion with these words:

"For these reasons, we find in the evidence, sufficient basis for the rule of damages applied."

A similar case from the New York courts is that of *Crandall v. A. B. Leach & Co.*, 223 N. Y. Supp. 127. The bonds purchased by plaintiff in that case were of the same issue as involved in the *Hotaling* case, and the same fraud was charged. Plaintiff introduced evidence showing that the trust indenture securing his bonds had been foreclosed, and that he had received but $5.84 for each $1,000 bond. The trial court excluded this evidence, but submitted the case to the jury, which returned a verdict in favor of plaintiff. The trial court then set the verdict aside, and rendered judgment dismissing the plaintiff's petition, on the sole ground that the evidence of damages was insufficient to support any recovery. The Appellate Division of the New York Supreme Court reversed the trial court, and in the course of the opinion said:

"Studying the picture as a whole, no great difficulty should be encountered in an arrival at an approximate value of the bonds in question from January to March, 1920, and, as we view it, there was sufficient evidence from which a jury might have in its judgment determined that at the time of the purchase they were intrinsically worth much less than the sum plaintiff paid for them. The National Oil Company was a holding company. Its properties were owned by other corporations subsidiary to it, and its control thereof rested upon its ownership of the stock of those subsidiaries. This was the only pledge to secure the bonds in ques-

tion, so that the actual properties but indirectly supported their value. * * *

A number of other exceptions are called to our attention, but in view of this conclusion only one of them need now be mentioned. A new trial must be had, and it therefore seems best to point out that the foreclosure decree under which the property was sold, while not a final determination of the value of the bonds, either at the time of their purchase by plaintiff or later, was nevertheless competent evidence for the jury to consider on the question of their value, as well as for the purpose for which it was admitted, and that its exclusion from consideration on the question of damages was error."

Most of the courts, both state and federal, which have had occasion to pass upon the question presented in the *Hotaling* and *Crandall* cases, have arrived at similar conclusions. Such was the decision of the Iowa Supreme Court in *Baumchen v. Donahoe*, 215 Iowa 512, 242 N. W. 533. The Sixth Circuit Court of Appeals arrived at the same result in *Hindman v. First National Bank*, 112 Fed. 931, and see *Paul v. Cameron*, from the Supreme Court of Nebraska, 256 N. W. 11.

Some jurisdictions have adopted the rule that the measure of damage will be limited by the actual, inherent value of the securities at the time of the discovery of the fraud. Iowa, however, has not seen fit to follow that rule. The proof adduced in the instant case was sufficient to support the verdict of the jury for $66,150. The fixing of the damage was the exclusive province of the jury. The record presents nothing in this respect of which respondent can properly complain, and the Circuit Court of Appeals did not base its reversal of the judgment upon any lack of proof as to the amount of petitioner's damage.

CONCLUSION.

That respondent made false representations concerning the location of the Long-Bell, Weyerhaeuser, Longview Fibre, and other industrial properties, and the frontage of the city upon the Columbia River, is conceded by every one. We have pointed out that the evidence was amply sufficient to justify the jury in finding that respondent's officers, on numerous and oft-repeated trips to Longview, could not well have failed to discover the true facts with reference to the location of the corporate limits of the city.

The record clearly justified the jury in the trial court, in finding that respondent indulged in half-truths, made false and misleading representations with respect to the financial condition of The Long-Bell Lumber Company, both by affirmative misrepresentations, and by suppressing the true facts within its knowledge. The representation of the Wood letter of May 14, 1930, that petitioner had been furnished "substantially all the data," was a material representation, and the Circuit Court of Appeals merely substituted its judgment for that of the jury in holding that the recitals of that letter were of "trivial materiality."

The Circuit Court of Appeals for the Seventh Circuit erroneously determined that the so-called "hedge clause" of the offering circular afforded to respondent a defense to the charges of fraud. Counsel for respondent, in their brief in this court, concede that the hedge clause constitutes no defense to misrepresentations of fact, whether deliberately made, with knowledge of their falsity, or recklessly made, with no reason to believe that the statements were true. The Seventh Circuit Court of Appeals, as we have pointed out, erroneously held that the hedge clause constituted a defense.

The decision of the Circuit Court of Appeals for the Seventh Circuit goes far beyond any other reported case,

is without support in judicial precedent, and is based upon clearly untenable grounds. Well established principles of law, applicable to this case, require that the judgment of the Circuit Court of Appeals be reversed, and that the case be remanded to that tribunal for further proceedings.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 291

EQUITABLE LIFE INSURANCE COMPANY OF IOWA,

Petitioner,

vs.

HALSEY, STUART & CO., A CORPORATION,

Respondent.

ANSWER OF HALSEY, STUART & CO., RESPONDENT, TO THE PETITION OF EQUITABLE LIFE INSURANCE COMPANY OF IOWA FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner brought an action in deceit against respondent based upon alleged false representations and concealment of material facts in connection with the sale to petitioner in 1930 of several lots of bonds issued by various improvement districts of the City of Longview, Washington. The claimed misrepresentations were two statements contained in a general description of "Longview" in an offering circular which had been put out by respondent at the time of the original issuance and sale

of the bonds in 1927 and an excerpt from a letter written by respondent's sales manager for the Iowa territory to petitioner's Vice President on May 14, 1930. The only alleged concealment claimed by petitioner was the failure of respondent to advise petitioner of certain facts coming to its knowledge regarding the financial condition of The Long-Bell Lumber Company, the guarantor of the bonds, which it was charged reflected upon the financial soundness of that company.

Without passing upon the numerous errors alleged in the admission of evidence, the instructions to the jury, and in the total failure of proof on the issue of damages, the Circuit Court of Appeals found that the proof failed to establish the essential elements of an action for deceit, either for false representations or for fraudulent concealment, and reversed and remanded the case to the District Court for a new trial. In so deciding that the case should never have been submitted to the jury, the Circuit Court of Appeals applied the Iowa law defining the elements which must be established to make out a case of either false representation or fraudulent concealment. No question is raised here as to the accuracy of the Circuit Court of Appeals' statement of the requisites of an action for deceit as announced by the decisions of the Supreme Court of Iowa. The sole questions presented, therefore, are factual.

Since the decision of the Circuit Court of Appeals was rested wholly on the facts, it is obvious that the determination of an important question of local law in a way probably in conflict with applicable local decisions is not involved. This was fully recognized by counsel for petitioner as late as July 1, 1940, when they filed a petition in the Circuit Court of Appeals in which they stated (Tr. 699-700):

"On April 27, 1940 this court entered its opinion

and order reversing the judgment of the court below, and that the *sole ground* for reversal discussed in the opinion is the insufficiency of the evidence to support the verdict." (Italics ours.)

The Circuit Court of Appeals merely applied the well settled Iowa law governing deceit actions to the facts in the instant case and distinguished the Iowa cases relied upon by petitioner upon the facts of each of those cases. No controlling, much less important, question of Iowa law was involved in the Circuit Court of Appeals decision.

It is equally clear that the decision of the Seventh Circuit does not involve a conflict with the decision of another Circuit Court of Appeals on the same matter. Resting, as this decision does, wholly on the facts, such a conflict is not possible. Moreover, it is difficult to understand how a decision involving only questions of Iowa law, and where, under the doctrine of *Erie R. R.* v. *Tompkins,* 304 U. S. 65, the Iowa law is controlling, could involve a conflict with the decision of another Circuit Court of Appeals.

The only other possible suggested special and important reason for this Court taking the case is that the Circuit Court of Appeals, because it reviewed the facts and concluded that petitioner had not established its alleged action for deceit, so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. The mere statement of the proposition that a Circuit Court of Appeals may not examine the facts in a law action and find that they do not sustain the plaintiff's alleged cause of action, without thereby departing from the accepted course of judicial proceedings, carries its own refutation. It was the right and duty of the Circuit Court of Appeals, in view of the errors assigned, to examine the evidence and pass upon its legal sufficiency to sustain petitioner's amended complaint.

This Court has repeatedly held that the granting of a writ of certiorari is not warranted merely to review the evidence or inferences drawn from it.

General Talking Pictures v. *Western Electric Co.*, 304 U. S. 175, 178.

Federal Trade Commission v. *American Tobacco Co.*, 274 U. S. 543, 544.

United States v. *Johnston*, 268 U. S. 220, 227.

Southern Power Co. v. *N. Car. Public Service Co.*, 263 U. S. 508.

Houston Oil Co., etc. v. *Goodrich*, 245 U. S. 440, 441.

A re-review of the evidence by this Court is what petitioner seeks. Unless this Court takes a different view of the facts than did the Circuit Court of Appeals, no question is presented for review for, as petitioner's counsel correctly state (Tr. 700), "The sole ground for reversal discussed in the opinion is the insufficiency of the evidence to support the verdict".

For the reasons thus briefly indicated, we respectfully submit that the petition should be denied.

Should this Court deem it necessary, however, in passing upon the reasons urged by petitioner for allowance of the writ, to consider the evidence in more detail, we respectfully refer the Court to the statement of the case made by the Circuit Court in its opinion (Tr. 657-673). Recognizing as it does (Tr. 672) that all conflicts must be resolved in favor of the jury's finding, the Circuit Court of Appeals has stated the facts in the light most favorable to petitioner. Indeed, some of the statements made and inferences drawn in petitioner's favor go further, we believe, than is justified by the record.

To give this Court a somewhat fuller picture of the facts, we append a statement supplemental to that contained in the Court's opinion, embracing some material facts which were before the Circuit Court of Appeals but are not adverted to in its opinion.

Supplemental Statement of Facts.

A. The Long-Bell Lumber Company was one of the largest, if not the largest, lumber manufacturing companies in the United States (Tr. 346). The stock of The Long-Bell Lumber Corporation, the holding company, was listed on the New York Stock Exchange and quarterly consolidated earnings statements were filed with the Exchange and made available to the public generally. The earnings reflected in these statements were reported in the financial journals and newspapers (Tr. 145, 355).

B. Halsey, Stuart & Co. was named as fiscal agent for The Long-Bell Lumber Company in only one of the issues of bonds which Halsey, Stuart & Co. marketed. This was the issue of $3,250,000 of bonds of the Longview, Portland & Oregon Railroad Company (Plff's Ex. B-4, Tr. 421-31). All that Halsey, Stuart & Co. did as such fiscal agent under this bond issue was to collect the interest coupons at maturity and pay the same over to the holders thereof (Tr. 97).

C. Halsey, Stuart & Co., before purchasing the Local Improvement Districts Bonds of the City of Longview, insisted that the bonds be unconditionally guaranteed as to both principal and interest by The Long-Bell Lumber Company (Tr. 74, 82, 120, Plff's Ex. P-34).

D. The last bonds of the three issues of Longview Local Improvement Bonds which Halsey, Stuart & Co. purchased and offered for sale in 1925, 1926 and 1927 had been sold by the early part of *1928* (Tr. 84, 340). Halsey,

Stuart & Co. maintained a trading department through which it purchased and resold bonds of its own origination as well as bonds originated by others (Tr. 99). *All of the Local Improvement Bonds sold to the petitioner* were acquired by Halsey, Stuart & Co. for its own account (Tr. 99-100) in relatively small lots, from investors, financial institutions and dealers during the period from October 9, 1929 to December 8, 1930, at prices only a point or two below the prices at which the bonds were resold to the petitioner (Tr. 373-4, 617-19), except with respect to one lot of bonds purchased on October 9, 1930 where, due to special circumstances (Tr. 287-8), Halsey, Stuart & Co. was able to purchase the bonds at 89 (Tr. 617). Moreover, Halsey, Stuart & Co. continued to buy these bonds, for its own account and with its own money, well into the year 1931 (Tr. 100, 166).

All bonds available for sale through Halsey, Stuart & Co.'s trading department were shown on a weekly printed list of bonds on hand referred to as "Bonds on Hand" list, which it furnished to its several branch offices and salesmen, supplemented by daily advices indicating the bonds still available for sale (Tr. 296). It was from this "Bonds on Hand" list for May 3, 1930 (Deft's Ex. 19, Tr. 574) that Mr. Kelley, Halsey, Stuart & Co.'s salesman in Des Moines, Iowa, discovered the existence of $85,000 Longview Local Improvement Districts Bonds on hand available for sale and, in one of his calls on Mr. Hubbell, Vice President of the petitioner, directed his attention to these bonds (Tr. 296).

E. At the time Kelley called Mr. Hubbell's attention to the $85,000 of Local Improvement Districts Bonds available for sale, he gave him a copy of the original bond circular dated April 7, 1927 (Plff's Ex. B-1, Tr. 410), explaining that the circular was not current but one used in selling the original issue some three years prior to that time (Tr. 296). Mr. Hubbell requested information as to the

amount of bonds in each issue which had been retired, some general information as to the Local Improvement District laws of the State of Washington, and concerning the City of Longview, and specifically asked for the annual report of The Long-Bell Lumber Company for the year ending December 31, 1929 (Tr. 296-7, 316). None of this information was in Kelley's possession. He had never sold Longview Local Improvement Districts Bonds before and his sole knowledge of the issue was confined to the information contained in the original circular (Tr. 314). He accordingly asked his home office to supply the requested data (Tr. 314, 297). Kelley received from his home office and turned over to Mr. Hubbell a digest of the Washington Local Improvement District laws (Deft's Ex. 2), a printed copy of the annual report of The Long-Bell Lumber Company and subsidiaries for the year ended December 31, 1929 (Plff's Ex. B-34, Tr. 468), and a package of documents taken directly from the buying file of Halsey, Stuart & Co. containing the various showings which Halsey, Stuart & Co. had obtained from The Long-Bell Lumber Company in connection with the original purchase of the Longview Local Improvement Districts Bonds (Tr. 341).

F. The respondent was but one of fifteen investment houses from which the Equitable Life Insurance Company was purchasing securities in 1930 (Tr. 186). Mr. Hubbell was an experienced bond buyer. He had been buying special assessment bonds, as well as other types of municipals, for many years prior to 1930 (Tr. 188) and was acting for a company that then held more than $20,000,000 of bonds in its portfolio (Tr. 186, Deft's Ex. 1).

G. The information as to the City of Longview embodied in the bond circulars and the balance sheet figures there contained were all obtained by Halsey, Stuart & Co. from The Long-Bell Lumber Company (Tr. 337-40). Each

bond circular was submitted to The Long-Bell Lumber Company for its approval, and the description of "Longview" contained in the particular circular which was delivered to Mr. Hubbell was dictated by the advertising manager for The Long-Bell Lumber Company (Tr. 339, 615). The statement in the circular describing Longview was also examined by the general counsel for The Long-Bell Lumber Company, Mr. Jesse Andrews, who had visited Longview almost every month from 1923 to 1930 (Tr. 362). He regarded the statement as both proper and accurate (Tr. 356).

H. The statement made by Mr. Wood of Halsey, Stuart & Co. in his letter of May 14, 1930, offering to exchange $100,000 of the Longview bonds for $100,000 of Louisiana Highway bonds (Plff's Ex. B-24, Tr. 466), to the effect that "We believe you have before you practically all of the data covering this issue of bonds", referred to all of the material which had been sent to Kelley for transmission to Mr. Hubbell, including Halsey, Stuart & Co.'s buying file (Tr. 332). The sending of Halsey, Stuart & Co.'s buying file to the purchaser was unusual. "To that extent we went very much further in the matter of furnishing information than would be customary and usual in such a sale" (Tr. 331). Wood testifies that he did not consciously withhold from the Equitable Life Insurance Company of Iowa any information in his possession relative to the Longview Local Improvement Districts Bonds or The Long-Bell Lumber Company (Tr. 332).

I. Petitioner purchased from Halsey, Stuart & Co. a total of $353,000 Longview Local Improvement Districts Bonds. At the time of the trial, petitioner's holdings had been reduced to $266,000 through the payment and retirement of bonds by the several districts (Tr. 617). At the time of trial, interest had been paid on all of the bond issues in full up to and including April 1, 1936, and on

some of the issues to as late as February 5, 1938 (Tr. 623). Petitioner had received a total of $130,337.34 by way of interest on its bonds (Tr. 491).

J. Mr. Hubbell, Vice President of the Equitable Life Insurance Company of Iowa, admits that by the middle of 1931 he was fully advised as to all the facts regarding Longview and The Long-Bell Lumber Company which the complaint alleges respondent fraudulently and maliciously misrepresented or failed to disclose prior to the sale of the bonds (Tr. 201). No complaint was made by the Equitable to Halsey, Stuart & Co. that any facts had been misrepresented to the Equitable or withheld from it (Tr. 308-9, 201) until August, 1934, shortly before the institution of this suit and approximately three years after all of the information was in Mr. Hubbell's possession (Tr. 379-80). The Equitable continued to buy securities from Halsey, Stuart & Co. after the Vice President of the Equitable admits all the facts regarding the bonds were fully known to him. During 1931 Kelley sold the Equitable $1,561,000 of bonds, during 1932 $201,000, during 1933 $104,000, and in March, 1934 $50,000, or a total of approximately $2,000,000 (Tr. 305-6, Deft's Ex. 26, Tr. 612). Mr. Hubbell continued during 1931 and subsequent years to request of respondent additional information regarding the local improvement bond issues and the City of Longview (Tr. 308). Every request was fully complied with by respondent (Tr. 200).

K. Under date of November 11, 1931, Mr. Hubbell's assistant, Mr. Windsor, in a written memorandum to Mr. Hubbell, stated that a careful check of the correspondence and offering sheet of Halsey, Stuart & Co. in regard to the Local Improvement Districts Bonds "fails to disclose any misstatements on their part" (Plff's Ex. B-56, Tr. 493). No letters were ever written by the petitioner to Halsey, Stuart & Co. complaining or intimating that any misstate-

ments had been made or that any material facts had not been disclosed in connection with the sale of the bonds until August, 1934 (Tr. 379-80). Even then the petitioner made no claim that respondent had concealed or failed to disclose any facts or circumstances regarding Long-Bell's financial condition (Tr. 379-80).

L. At the beginning of the year 1930, The Long-Bell Lumber Company had assets in excess of $100,000,000, with $50,000,000 in surplus (Tr. 347-8). The financial officers of the company in 1930 made a forecast of earnings through the year 1931 which showed that, with no improvement in business, the company could go through the year without increasing its bank borrowings, paying all obligations as they matured (Tr. 352).

M. Mr. Hubbell, Vice President of petitioner, had numerous conferences with Halsey, Stuart & Co. from the Summer of 1933 through July of 1934, in regard to a reorganization of The Long-Bell Lumber Company and particularly of the Longview Local Improvement Districts Bonds (Tr. 378-9). Hubbell agreed to serve as one member of the committee representing the Local Improvement Districts Bonds (Tr. 379) and wrote several letters to the respondent tentatively agreeing to proposed plans of reorganization (Tr. 570-3). At no time during these extended negotiations did Mr. Hubbell ever claim that Halsey, Stuart & Co. had in any respect misrepresented the Longview Local Improvement Districts Bonds at the time of their sales to the Equitable (Tr. 379).

N. Eight months after this suit was brought, the Equitable was still carrying its Longview Local Improvement Districts Bonds on its books at 85% of their par value, and in its statement to policyholders for the year ending December 31, 1935 represented that it carried all of its investments at a conservative valuation and that the $272,000 par value of Longview bonds then held were worth $231,200 (Tr. 202, Deft's Ex. 8).

BRIEF IN SUPPORT OF ANSWER TO PETITION FOR WRIT OF CERTIORARI.

SUMMARY OF ARGUMENT.

I.

The record is barren of proof that respondent had knowledge prior to the sale of the Local Improvement Districts Bonds to petitioner that the description of "Longview" contained in the original offering circular or in the printed literature prepared and distributed by The Long-Bell Lumber Company or its subsidiaries was in any respect inaccurate. For lack of this essential proof, the Circuit Court of Appeals properly found that the claim of false representations had not been sustained. Its decision would, of necessity, have been the same even if the offering circular had not contained the so-called "hedge clause". The statement of the Court that the "hedge clause" constituted a valid defense to the charge of misrepresentation, where, as in the instant case, the respondent had exercised great care and diligence in having the statements checked by The Long-Bell Lumber Company and was without knowledge of any inaccuracy, is sustained by the applicable authorities.

Readinger v. *Rorick*, 92 Fed. (2d) 140, (cert. den. 302 U. S. 758).

Saupe v. *St. Paul Trust Co.*, 170 Minn. 366, 212 N. W. 892.

II.

The record, as pointed out by the Circuit Court of Appeals, shows that respondent made no affirmative representations of any character regarding the financial condition of The Long-Bell Lumber Company, other than to furnish petitioner with the exact and accurate information which it requested. There is no basis, therefore, for the application of the doctrine of half-truths and the Circuit Court of Appeals properly so decided.

Gamet v. *Haas,* 165 Ia. 565, 146 N. W. 465, 466.

Benedict v. *Hall,* 201 Ia. 488, 207 N. W. 606, 607.

Wagner v. *Standard Seed Tester Co.,* 194 Ia. 1330, 191 N. W. 314, 315.

Palo Alto Stock Farm v. *Brooker,* 131 Ia. 229, 108 N. W. 307.

Boileau v. *Records & Breen,* 165 Ia. 134, 144 N. W. 336, 338.

Sherman v. *Harbin,* 25 Ia. 174, 100 N. W. 629, 631.

III.

The statement contained in Mr. Wood's letter of May 14, 1930, that: "You observe, of course, that this city has no funded debt, other than these improvement bonds and that the original debt has been materially reduced through retirement and maturity", cannot be tortured into meaning, as contended by petitioner, that there were outstanding no bonds of other municipal bodies which constituted a charge or lien upon the lands and property included within the various local improvement districts of the City of Longview. Moreover, the construction of an alleged written

misrepresentation, as well as the question of the materiality of such representation, are questions of law for the Court.

Baker v. *Mathew,* 137 Ia. 410, 115 N. W. 15.

Nat'l Bank of Pawnee v. *Hamilton,* 202 Ill. App. 516.

Rand v. *Michaud,* 122 Me. 65, 118 Atl. 893.

IV.

The Circuit Court of Appeals had no occasion to apply the rule of *caveat emptor* to the hypothetical state of facts set up in petitioner's Point IV. There is no evidence in this record that respondent by word or act did anything to lead petitioner to believe that the credit standing of The Long-Bell Lumber Company was in any respect different from what respondent knew or believed it to be.

Boileau v. *Records & Breen,* 165 Ia. 134, 144 N. W. 336.

Kohl v. *Lindley,* 39 Ill. 195, 201.

Sherman v. *Harbin,* 25 Ia. 174, 100 N. W. 629.

V.

No defense was predicated in this case upon the negligence of the petitioner in not discovering the facts which it is alleged were concealed from it. No such contention was made by the respondent nor did the Circuit Court of Appeals announce such a principle.

ARGUMENT.

Out of the Circuit Court of Appeals' opinion, which counsel for petitioner have stated under oath was predicated solely on the insufficiency of the evidence to support the verdict (Tr. 700), petitioner seeks, for the purpose of inducing this Court to review the case, to create some controlling questions of law. The effort is abortive and each question discussed by petitioner is found to depend wholly upon petitioner's interpretation of the facts, an interpretation which petitioner has already urged on the Circuit Court of Appeals without success. We will answer briefly the five points contained in petitioner's brief, none of which, incidentally, supports the six reasons urged upon this Court as a justification for the granting of a writ:

I.

The Record Is Barren of Proof That Respondent Had Knowledge Prior to the Sale of the Local Improvement Districts Bonds to Petitioner That the Description of "Longview" Contained in the Original Offering Circular or in the Printed Literature Prepared and Distributed by the Long-Bell Lumber Company or Its Subsidiaries Was in Any Respect Inaccurate. For Lack of This Essential Proof, the Circuit Court of Appeals Properly Found That the Claim of False Representations Had Not Been Sustained. Its Decision Would, of Necessity, Have Been the Same Even If the Offering Circular Had Not Contained the So-Called "Hedge Clause." The Statement of the Court That the "Hedge Clause" Constituted a Valid Defense to the Charge of Misrepresentation, Where, as in the Instant Case, the Respondent Had Exercised Great Care and Diligence in Having the Statements Checked by the Long-Bell Lumber Company and Was Without Knowledge of Any Inaccuracy, Is Sustained by the Applicable Authorities.

Petitioner again argues, as it did in the Circuit Court of Appeals, that the jury should have been allowed to *infer* knowledge by Halsey, Stuart & Co. as to the inaccuracy of the statement regarding Longview contained in the offering circular. Such an inference, it is argued, *could* be drawn from the fact that Halsey, Stuart & Co. prior to 1925 sold several large timber bond issues for the Long-Bell Company; that officers of the respondent were in Longview prior to 1925 and *could* have found out about the exact location of the city limits; and that early figures as to the assessed value of the real estate in the City of Longview *should* have warned Halsey, Stuart & Co. that the Long-Bell and Weyerhaeuser mills were not in the city proper.

The fallacy of these arguments is pointed out by the Circuit Court of Appeals in its opinion. At most, the facts relied upon give rise to mere *inferences.* They fall far short of that clear, convincing and satisfactory evidence by which the essential element of *knowledge* must be established. Moreover, the *inference* of knowledge which the petitioner seeks to impute to Halsey, Stuart & Co. is directly rebutted by the uncontradicted proof.

1. That Halsey, Stuart & Co. purchased the local improvement bonds solely in reliance upon the guaranty of The Long-Bell Lumber Company and made no attempt to ascertain or to describe in its offering circular the lands within the several districts, the improvements thereon or the values represented thereby (Tr. 80, 82, 411). There was no occasion, therefore, for Halsey, Stuart & Co. to determine, when it bought the bonds or when it sold them, the limits of the several districts or what properties were located therein.

2. That Halsey, Stuart & Co. in fact relied solely upon The Long-Bell Lumber Company to supply it with a description of Longview for the purposes of its bond circulars and the very description complained of was furnished to the respondent in writing by The Long-Bell Lumber Company and approved by its general counsel (Tr. 339, 356, 615, Deft's Exs. 33 & 33A). The representative of Halsey, Stuart & Co. who prepared the circular relied upon that information (Tr. 340). Neither he nor any person connected with the respondent, so far as the record discloses, had *knowledge* of any inaccuracy in Long-Bell's statement of the facts (Tr. 340).

The strange argument is advanced that respondent was guilty of making reckless statements when it turned over to petitioner the contents of respondent's original buying file containing the "showings" which respondent had collected and used in connection with its own purchase of the bonds (Tr. 338-9). These documents consisted of the sixteen page rotogravure paper (Plff's Ex. B-25) depicting scenes in Longview and surrounding territory put out by the Longview Company, an illustrated folder entitled

"Longview" put out by the Longview Chamber of Commerce (Plff's Ex. B-28), copy of the magazine "Longview Progress" (Plff's Ex. B-31), and copies of advertisements of Longview which the Long-Bell Company had carried in the Saturday Evening Post (Plff's Ex. B-26-7, B-29).* These printed documents, or some of them, contained references to the lumber plants of the Long-Bell *in* Longview, Washington.

On what theory respondent can be said to have been reckless in giving this original source material to the petitioner is not disclosed. Certainly respondent, having caused the statements in its own circular to be carefully checked by Long-Bell officers and its general counsel, had no reason to question the same description contained in Long-Bell's national advertising. Indeed, the only effect of the statements contained in the national advertising of Longview was to confirm in the mind of respondent the accuracy of the statements in the circular, which Long-Bell officials prepared and approved.

The Iowa cases cited by Petitioner, *Davis* v. *Central Land Co.*, 162 Ia. 269, 143 N. W. 1073, and *Haigh* v. *White Way Laundry Co.*, 164 Ia. 143, 145 N. W. 473, involving as they do "reckless assertion as true that of which the party knew nothing" or "asserting that to be true which was not true, which the defendant did not know to be true," have no application to the facts in the instant case where respondent admittedly checked every statement made by the most accurate available means.

The suggestion that Halsey, Stuart & Co., cannot now take advantage of the "hedge clause" because it relied primarily in its original purchase of the bonds on the Long-Bell guaranty is a complete *non sequitor*. The bond circular contained not only a description of Longview and

* All of these original exhibits were certified up to the Circuit Court of Appeals and do not appear in the transcript (Tr. 644).

its commercial development and possibilities, but contained the consolidated balance sheet of The Long-Bell Lumber Corporation and subsidiaries and a statement as to the company's net earnings (Plff's Ex. B-1, Tr. 410-13). Moreover, while Halsey, Stuart would not have purchased the bonds but for Long-Bell's guaranty, it relied upon the truth of *all facts* set out in the circular, as clearly appears from the testimony of Mr. Simond, who prepared the bond circulars (Tr. 338-40), and is borne out by the meticulous care with which these statements of fact in each circular were submitted to Long-Bell for approval and used only after such approval was obtained.

The importance of the "hedge clause" is that it called the buyer's attention to the fact that the information contained in the circular was being supplied by The Long-Bell Lumber Company and, while regarded as reliable by Halsey, Stuart & Co., was not guaranteed. Mr. Hubbell, as an experienced bond buyer, frankly admits that he "knew that it was the practice, and of necessity so, of investment houses in securing information regarding the properties of a company upon which securities were being issued to secure that information from the issuing company" (Tr. 188). That Halsey, Stuart & Co. believed all the statements made in the circular to be true is established by the testimony of those officials who had charge of the preparation of the bond circulars. The exact degree to which respondent relied in its original purchases upon each of the several facts appearing in the circulars is utterly immaterial.

The Circuit Court of Appeals was clearly right in the principle announced—that representations, qualified by the use of language indicating that they are based on information and belief, and which were honestly believed to be true, are not the basis for actionable fraud. The Circuit Court of Appeals for the Sixth Circuit, in a strikingly

similar case, recently so decided (*Readinger* v. *Rorick*, 92 Fed. (2d) 140, (cert. den. 302 U. S. 758)). See also *Saupe* v. *St. Paul Trust Co.*, 170 Minn. 366, 212 N. W. 892.

II.

The Record, as Pointed Out by the Circuit Court of Appeals, Shows That Respondent Made No Affirmative Representations of Any Character Regarding the Financial Condition of The Long-Bell Lumber Company, Other Than to Furnish Petitioner With the Exact and Accurate Information Which It Requested. There Is No Basis, Therefore, for the Application of the Doctrine of Half-Truths and the Circuit Court of Appeals Properly So Decided.

Admitting that the respondent was under no duty to voluntarily disclose further information coming to its possession regarding the financial condition of The Long-Bell Lumber Company, petitioner now asserts that Halsey, Stuart & Co. made affirmative misleading statements regarding Long-Bell and was, therefore, guilty of indulging in half-truths. The record, as the Circuit Court of Appeals points out in its opinion (Tr. 668-70), fails to disclose a single untrue or misleading statement regarding Long-Bell's financial condition. The premises upon which petitioner predicates its argument under Point II is wholly false.

Halsey, Stuart & Co. furnished to Mr. Hubbell exactly what he requested (Tr. 297, 315-16), which was "an annual report covering The Long-Bell Lumber Company's operations for the year ended 1929." That report was admittedly accurate and complete. Hubbell asked for no other or further financial data. No half-truth was spoken which could possibly give rise to a duty on respondent's part to make further disclosures.

Counsel refer to Mr. Wood's letter of May 14, 1930, in which, referring to the extensive data given to Mr. Hubbell before he purchased any of the local improvement districts bonds, Wood said, "We believe you have before you practically all the data covering this issue of bonds, but if you have any question in mind, we shall be pleased indeed to have you call Mr. Kelley or this office for anything you may need" (Tr. 466). To call this statement, which expressed, the evidence shows, Mr. Wood's sincere belief (Tr. 332) and which invited the petitioner to ask for anything that it wanted, a misleading statement of fact is patently absurd. The Circuit Court of Appeals answered this argument by the observation, "We think this cannot be construed as a deliberate attempt to throw appellee off its guard or mislead it into failing to pursue its inquiries further" (Tr. 670).

The attempt to find a misleading statement in Wood's letter of June 4, 1930 (Pltff's Ex. B-40, Tr. 483), is even more futile. What is false or misleading in the letter, petitioner wholly fails to point out. The statements of fact in the letter were accurate. That the sale of the Longview, Portland & Northern Railroad was a most favorable financial transaction for The Long-Bell Lumber Company was the unanimous judgment of everyone familiar with the sale (Tr. 353-4, 148).

The two cases referred to by petitioner, *Cable* v. *U. S. Life Insurance Co.*, 111 Fed. 19, and *Noble* v. *Renner*, 177 Ia. 509, 159 N. W. 214, were both cited to the Circuit Court of Appeals, and the Renner case was discussed and distinguished in the Court's opinion (Tr. 669). Neither authority has any application to the facts in the instant case. In the Cable case, which incidentally was reversed by this Court in 191 U. S. 288, a request for information as to the health of a potential insuree, was answered by the statement that the insured had been sick two or three

days but was no worse than he had been for forty-eight hours, when in fact the insured was, as the speaker well knew, seriously ill with acute pneumonia. This is the clearest sort of a case where a half-truth was spoken.

In *Noble* v. *Renner,* as the Circuit Court of Appeals points out, there was much more than mere silence on the part of the defendant. In that case, the plaintiff had under negotiation a contract for the purchase of land owned by the defendant adjoining the Missouri River. The river was cutting into the land. Plaintiff inspected the property and was apparently satisfied to take it in its then condition. Prior to the consummation of the contract of sale, however, conditions became very much worse and a substantial part of the farm was crumbling into the Missouri River. Despite the fact that the defendant was fully advised of this situation, he told the plaintiff before the contract was signed that "there was no cutting there any more; that there would be a little sloughing of the bank in the Spring when the frost was going out". This, of course, was a direct misrepresentation and the Iowa Supreme Court held that there was more than a mere case of silence, there was "affirmative concealment intended to lead another to his injury". It is obvious that the Circuit Court of Appeals was right in finding that the decision of that case had no application to the facts in the case at bar.

A.

Respondent was under no duty, after supplying petitioner with all the information requested regarding Long-Bell's financial condition, to voluntarily advise petitioner of subsequent events, which petitioner claims had a bearing upon the Long-Bell situation, particularly where the officers of respondent were of the opinion that such events did not in any respect impair the financial standing of the Long-Bell Company or affect the guaranty of the local improvement bonds.

This is not a case where, pending a sale of a certain property, the condition of the property changes and the vendor, by *affirmative acts*, conceals such changes from the buyer and thus deceives the buyer as to the true condition of the subject matter of the sale. Such was the case of *Noble* v. *Renner*, 177 Ia. 509, so strongly relied upon by petitioner, the inapplicability of which we have already pointed out.

So in *Loewer* v. *Harris*, 57 Fed. 368, the parties were negotiating for the sale of a brewery. The defendant furnished the plaintiff with a financial statement of the brewery dated August 31, 1890. This statement was given to the defendant at a meeting in January, 1891. At this meeting (p. 370)

> "* * * the plaintiff asked the defendant if the brewery was still doing as well, telling him that the capitalization of the corporation would be based on the earning capacity of the business, and, if the profits were not as good as they had been, he would not want anything to do with it. The defendant said the figures of the prospectus and report were correct, and that the business was showing a gradual increase the same as it had done previously."

After the contract between the plaintiff and the defend-

ant was signed in April, 1891, plaintiff learned that actually, from August 31, 1890, the business had not gradually increased, "but, on the contrary, had materially diminished". Thus there was present not merely the production of the financial report, but an affirmative false statement as to subsequent financial condition. The representation was not that the report was true as of August 31, 1890, but that the brewery had enjoyed a gradual increase in profit down to January, 1891, which representation the defendant knew to be false before the plaintiff acted upon it. This element of fraudulent representation, completely lacking in the instant case, is the basis for the decision in the *Loewer* case. As the court says, at p. 373, immediately following the portion cited by the petitioner:

> "The representation made by the defendant respecting the output and profits of the business, if made at all, was made in response to an inquiry of the plaintiff, coupled with the statement that he would not want to have anything to do with the transaction if the profits were not as good as they had been, and that the capitalization of the corporation would be based on the earning capacity of the business. The defendant understood that the inquiry and answer were addressed to the condition of things which might be relied upon by the plaintiff as the basis of the contract which was thereafter to be formally concluded."

The record in this case fails to show any affirmative act by Halsey, Stuart & Co. tending in the slightest degree to conceal any fact from the petitioner. As a matter of fact, the reports as to the current financial condition and current earnings of The Long-Bell Lumber Company were available to the world. Its quarterly statements were filed with the New York Stock Exchange and published in all the leading financial papers and periodicals and were, as the Circuit Court of Appeals found (Tr. 668), readily available to petitioner.

The other alleged changes in condition, which petitioner asserts should have been voluntarily communicated to it by Halsey, Stuart & Co., had to do with sales by Long-Bell of properties not necessary to its lumber business, and the organization in the Fall of 1930 of The Long-Bell Lumber Sales Corporation. Each of these sales, as well as the organization of the Sales Corporation, were regarded by the respondent's officials as only the steps which a well-managed corporation would take during a period of financial stress to put itself in a more liquid position (Tr. 100, 166), and in the opinion of the respondent's officers (Tr. 101, 167), as well as the officers of Long-Bell (Tr. 351-55), did not impair but, on the contrary, materially strengthened Long-Bell's financial position. That respondent's officers were sincere in this belief is demonstrated by the fact that throughout 1930 and well into 1931 respondent continued to purchase Long-Bell securities, including Longview Local Improvement Districts Bonds, with its own funds and for its own account (Tr. 100, 166). Even if a duty to voluntarily disclose facts regarding The Long-Bell Lumber Company's financial condition had rested on respondent, it was certainly under no duty to disclose those facts which, in the opinion of its officers, did not reflect adversely upon Long-Bell's ability to meet its obligations.

The Circuit Court of Appeals correctly applied the Iowa law to the facts in this case. Where there is no duty to disclose information in the possession of the vendor, failure to disclose imposes no liability upon him.

Gamet v. *Haas,* 165 Ia. 565, 146 N. W. 465, 466.

Benedict v. *Hall,* 201 Ia. 488, 207 N. W. 606, 607.

Wagner v. *Standard Seed Tester Co.,* 194 Ia. 1330, 191 N. W. 314, 315.

Fraudulent concealment is to be sharply distinguished from failure to disclose and is present only where an intention to deceive is established.

Palo Alto Stock Farm v. *Brooker,* 131 Ia. 229, 108 N. W. 307.

Boileau v. *Records & Breen,* 165 Ia. 134, 144 N. W. 336, 338.

Sherman v. *Harbin,* 25 Ia. 174, 100 N. W. 629, 631.

Since there is a total lack of proof that respondent intentionally concealed or wilfully covered up a single fact regarding Longview, the Improvement Districts bonds, or The Long-Bell Lumber Company, the instant case is in complete accord with the Iowa cases cited above.

III.

The Statement Contained in Mr. Wood's Letter of May 14, 1930, That: "You Observe, of Course, That This City Has No Funded Debt, Other Than These Improvement Bonds and That the Original Debt Has Been Materially Reduced Through Retirement and Maturity," Cannot Be Tortured Into Meaning, as Contended by Petitioner, That There Were Outstanding No Bonds of Other Municipal Bodies Which Constituted a Charge or Lien Upon the Lands and Property Included Within the Various Local Improvement Districts of the City of Longview. Moreover, the Construction of an Alleged Written Misrepresentation, as Well as the Question of the Materiality of Such Representation, Are Questions of Law for the Court.

The charge made by petitioner in its complaint is that defendant wilfully, maliciously, fraudulently and falsely represented to the plaintiff "that the City of Longview had

no funded debt other than the City of Longview Local Improvement Districts bonds, *which constituted a charge or lien upon the lands and property included within the various Local Improvement Districts of the City of Longview''* (Tr. 11). In short, petitioner asked the Court to add a complete sentence to Wood's simple statement and to give the letter a meaning which Wood obviously did not intend to convey, and which Hubbell does not even claim he attached to the statement (Tr. 172). Wood referred to only two possible classes of bonds—bonds of the City of Longview and bonds of the local improvement districts. He did not purport to state what the debt of the county, the school district or of any other municipal subdivision was.

The statements that Longview had no funded debt and that the local improvement districts bonds had been materially reduced through retirement and maturity were, concededly, correct (Tr. 334). Mr. Hubbell admits that before he bought a single Longview bond he knew that these bonds were not funded debts of the City of Longview (Tr. 193). What, then, was the misrepresentation?

Petitioner asserts that the statement in Wood's letter led Hubbell to believe that the bonds of the Cowlitz County Consolidated Diking District were not liens on lands within the City of Longview. The Diking District was a separate municipal corporation embracing a large tract of land between the Cowlitz and the Columbia Rivers, including a substantial part of the City of Longview (Tr. 117, Deft's Ex. 35 A-H, Plff's Ex. B-25). Its bonds were widely advertised and sold in 1925 (Tr. 84, 376). The audited report of The Long-Bell Lumber Company, furnished to petitioner before the purchase of any of the local improvement districts bonds, disclosed the amount of Diking District bonds outstanding, that they were guar-

anteed as to principal and interest by Long-Bell and had been issued to defray the cost of erecting the dikes, and that the bonds were liens against all lands within the district (Tr. 474).

Hubbell made no inquiry regarding these bonds because, as he admits, it was not the practice in the purchase and sale of municipal bonds until after 1932 or 1933, to make any inquiry as to the amounts or liens of overlapping municipal issues (Tr. 186-7). All of the other experienced municipal bond men who testified confirmed this statement (Tr. 307, 332). The question of the possible lien of the Diking District bonds on part of the lands within the City of Longview was, therefore, not in the minds of either the buyer or the seller, and Hubbell does not claim that it was (Tr. 172). The Circuit Court of Appeals was clearly right on the facts in finding no misrepresentation whatever in the last paragraph of Wood's letter of May 14, 1930.

Moreover, the construction of a claimed misrepresentation in a written document is a question for the Court. The Court should determine in a deceit action whether the plaintiff "had a right to rely and did rely" on the alleged written misrepresentations (*Baker* v. *Mathew*, 137 Ia. 410, 115 N. W. 15; *Nat'l Bank of Pawnee* v. *Hamilton*, 202 Ill. App. 516), and, of course, the materiality of such representations is likewise a question of law for the Court (*Rand* v. *Michaud*, 122 Me. 65, 118 Atl. 893).

The conclusion of the Circuit Court of Appeals (Tr. 668) that the claimed misrepresentation was immaterial, in view of the admitted fact that it did not and could not have misled the purchaser, is obviously sound.

IV.

The Circuit Court of Appeals Had No Occasion to Apply the Rule of Caveat Emptor to the Hypothetical State of Facts Set Up in Petitioner's Point IV. There Is No Evidence in This Record That Respondent by Word or Act Did Anything to Lead Petitioner to Believe That the Credit Standing of The Long-Bell Lumber Company Was in Any Respect Different From What Respondent Knew or Believed It to Be.

The petitioner, under its Point IV, states a purely hypothetical case and then cites some general authorities in support of such suppositious case. The evidence is uncontradicted that petitioner never asked for any credit information regarding the Long-Bell Lumber, other than the audited report of The Long-Bell Lumber Corporation and subsidiaries for the year ended December 31, 1929, and that no statements, oral or written, were ever made by respondent regarding Long-Bell's financial condition. It should be recalled that Mr. Hubbell's specific request was for the Long-Bell annual report for the year ending December 31, 1929. He asked for no other financial data (Tr. 297, 315-6). Hubbell admits that at all times, both prior and subsequent to the purchase of the bonds, Halsey, Stuart & Co. gave him everything that he asked for (Tr. 192). In fact, as soon as the Long-Bell's annual statement for 1930 was available, Halsey, Stuart & Co. voluntarily sent the petitioner a copy (Tr. 311, 545, Deft's Ex. 6).

The authorities relied upon by petitioner but serve to illustrate the sharp distinction on the facts between the instant and the hypothetical case which petitioner states in its heading.

In *Iasigi* v. *Brown*, 58 U. S. 183, the defendant affirmatively represented that the credit of one Thompson was

such that "in making sales to them now, no more than an ordinary business risk would be run" (p. 191). And later that "We continue to have a favorable opinion of the concern you allude to" (p. 191). As a matter of fact, defendant had at the time lost all confidence in Thompson and knew that all his property had been then transferred to defendant. This presents a clear case of a material affirmative representation known to be false when made.

Likewise, in *Thermoid Rubber Co.* v. *Bank of Greenwood,* 1 Fed. (2d) 891, the defendant, in answer to the plaintiff's inquiry as to the financial condition of a certain tire company, advised that it had loaned the company on its own paper, that the loans were satisfactory and had been materially reduced, and that it considered the company worthy of credit, all of which statements were known to defendant to be untrue.

Furthermore, as the Circuit Court of Appeals points out, both under the Iowa law and under the law generally, to establish fraudulent concealment, in the absence of the existence of a fiduciary relationship between the parties, there must be "the doing of some affirmative acts to prevent the other party from making adequate investigation to discover the true facts" (Tr. 669). This record is barren of such proof.

See:

Boileau v. *Records & Breen,* 165 Ia. 134, 144 N. W. 336.

Kohl v. *Lindley,* 39 Ill. 195, p. 201.

Sherman v. *Harbin,* 25 Ia. 174, 100 N. W. 629.

V.

No Defense Was Predicated in This Case Upon the Negligence of the Petitioner in Not Discerning the Facts Which It Alleges Were Concealed From It. No Such Contention Was Made by the Respondent Nor Did the Circuit Court of Appeals Announce Such a Principle.

In Point V petitioner sets up a straw man for the sheer pleasure of destroying it. The Iowa cases which are cited in the Summary of Argument (p. 22) all involve *affirmative misrepresentations* by the defendant.

The portions of the Circuit Court of Appeals opinion referred to at page 36 of the petition apply not to affirmative misrepresentations but to alleged failures to disclose. The emphasis is that the ease with which petitioner could have discovered the facts alleged to have been fraudulently concealed effectively negatives the idea of active, intentional concealment by the respondent.

There being no duty to disclose arising from any fiduciary relationship, the Court merely indicates that the requisite proof of fraudulent concealment is lacking. In connection with the financial condition of The Long-Bell Lumber Company, the Circuit Court of Appeals (Tr. 668) remarks upon the ease with which the facts alleged to have been concealed were available. "The only evidence of concealment was that further facts were not voluntarily disclosed." Since no duty to disclose existed, and no active concealment could even be inferred—in fact, all of the evidence was directly contrary—no liability could be predicated upon the alleged financial information not voluntarily disclosed.

The ease with which information as to the physical condition of the City of Longview could have been (and was

ultimately) acquired is mentioned also, merely as negativing any deliberate withholding (*i. e.*, active concealment) of information from petitioner. In fact, the record does not indicate that respondent knew any more about the physical situation in Longview than did the petitioner.

No "defense" to an alleged affirmative misrepresentation based upon the ease with which petitioner could have acquired the truth was ever asserted by respondent, and still less is any such "defense" established by the opinion.

What the Circuit Court of Appeals does decide is that "there was a failure of *evidence* to prove the concurrence of all the essential elements of an action for fraud" (Tr. 672). The application of the law of Iowa cannot be questioned—the sole issue was one of fact.

Conclusion.

All of the five points urged by petitioner were presented to the Circuit Court of Appeals by its petition for a rehearing in almost the identical language of this petition for writ of certiorari and supported by the same authorities. The petition for rehearing was denied.

Despite all the vituperation indulged in by petitioner, what this case exhibits is an attempt by a large and well-informed insurance company to shift onto the respondent, which acted at all times in the utmost good faith, the loss which general economic conditions produced. The very fact that no claim of either misrepresentation or concealment was made until more than three years after full discovery of all the facts and after The Long-Bell Lumber Company had sought relief under Section 77-B of the Bankruptcy Act, is indicative of lack of substantial merit in petitioner's claims. No facts were presented which indicated any possible grounds for the imposing of lia-

bility, and the Circuit Court of Appeals properly decided that this case never should have gone to the jury.

There being no grounds shown for the exercise of this Court's discretion, and the case having been properly decided, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940

No. 291

EQUITABLE LIFE INSURANCE COMPANY OF IOWA,
Petitioner,

vs.

HALSEY, STUART & CO., a corporation,
Respondent.

BRIEF OF RESPONDENT

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I. Respondent does not contend, nor did the Circuit Court of Appeals find, that the so-called "hedge clause" in the original offering circular relieved respondent from liability for misrepresentations falsely or recklessly made. The court below properly found that the record was devoid of proof that respondent made the statements contained in the circular either with knowledge of their inaccuracy or recklessly 27

A. The proper function and scope of the "hedge clause" was to advise petitioner that the statements contained in the circular were not made by the respondent of its own knowledge, but were based upon information furnished by others and believed by respondent to be accurate. Such qualification was unnecessary as to Exhibits B-25, B-27 and B-28, which on their face disclosed that they were statements made by the Long-Bell Lumber Company, one of its subsidiaries, and The Longview Chamber of Commerce 31

B. The contention that the statement in the "hedge clause" that respondent relied

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upon the information contained in the circular in its purchase of the bonds is a misrepresentation, because respondent would not have bought the bonds but for the unconditional guaranty of Long-Bell, is patently unsound and an attempt to read into the language used a meaning not justified by the context 34

C. There is no basis on the record in this case for the contention that respondent made any statements regarding "Longview" as of its own knowledge or that it made such statements recklessly 36

II. Fraud is never to be presumed. It must be affirmatively proved by such clear and convincing evidence as leaves the mind well satisfied that the charges are true. For this positive requirement of proof, petitioner asks this court to adopt the principle that fraud may be presumed when it appears that the one charged with fraud might have discovered the facts by pursuing a line of inquiry other than that which was followed 41

Under Iowa law, the essential elements of an action for deceit are: That the representation was made, that it was false, known at the time to be false, made with intent to mislead plaintiff, relied upon by plaintiff to his damage, and no negligence in so relying.

III. The record contains no proof that respondent made any false statements or spoke any "half truths" regarding the financial condition of the Long-Bell Lumber Company. Petitioner's complaint is that respondent did not voluntarily disclose to petitioner every detail regarding Long-Bell's condition which came to respondent's knowledge during the year 1930.

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No such duty was imposed upon respondent under the Iowa law 46

A. Respondent, having furnished to petitioner the exact information regarding the Long-Bell Lumber Company which was requested, does not become guilty of fraudulent concealment by failing to voluntarily disclose subsequent financial transactions of Long-Bell. Especially is this so where, in the judgment of respondent's officers, there were no developments adversely affecting Long-Bell's guaranty of the Improvement Districts bonds or which caused respondent to cease the purchase of these bonds for its own account 57

IV. Under Iowa law the rule of *caveat emptor* is applied whenever the parties are dealing at arm's length and there is no evidence of fraudulent concealment. In the instant case there was no evidence of false or equivocal statements made by respondent regarding Long-Bell's financial condition. The court, therefore, properly applied the Iowa law in holding that respondent was under no duty to voluntarily disclose facts coming to its knowledge..... 62

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VI. The Circuit Court of Appeals did not decide that petitioner's negligence could be pleaded as a defense to fraudulent representations or affirmative concealment of material facts, nor was its decision based on that principle. The remarks of the court to which petitioner calls attention were incidental to its discussion of the total failure of the proof to establish fraudulent concealment 71

VII. The judgment of the Circuit Court of Appeals reversing and remanding the cause for a new trial is fully justified, not only because the proofs relied upon are insufficient to sustain the action, but also because of the trial court's errors in the admission of evidence and instructions to the jury and because of the total failure of proof as to the amount, if any, of the petitioner's damages. All of these questions were presented fully to the Circuit Court of Appeals 73

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1940

EQUITABLE LIFE INSURANCE COMPANY OF IOWA, *Petitioner*,

vs.

HALSEY, STUART & CO., a corporation, *Respondent.*

No. 291

BRIEF OF RESPONDENT.

SUPPLEMENTAL STATEMENT OF THE CASE

While petitioner's statement of the case, subject to certain inaccuracies which will be pointed out, accords generally with the record, it omits many facts which are material to a correct understanding of the issues. The court below having decided the case solely on the insufficiency of the evidence to sustain the charges of fraud, a summarization of these omitted facts is important.

The Long-Bell Lumber Company, one of the largest producers of lumber in the country, anticipating the early exhaustion of its timber supply in the South, purchased in 1919 and 1921 large tracts of timber in the Pacific Northwest, first in Oregon and then in Washington. This vast timber tract was about thirty miles from the Columbia River midway between Portland and the Pacific Ocean (Tr. 353).

To provide for the construction of the large lumber mills necessary for the conversion of this timber into lumber products and the housing of its thousands of prospective em-

ployees, the Company acquired in 1922 about 11,000 acres of land in Cowlitz County, Washington, at the junction of the Cowlitz and Columbia Rivers (Tr. 345). Since the land adjacent to the Columbia and Cowlitz Rivers was subject to periodic overflow, it was necessary to construct extensive dikes to protect the land. This work was done by The Long-Bell Lumber Company or one of its subsidiaries and, after completion, the cost of the work was funded through the organization of a diking district under the laws of the State of Washington, which district issued its bonds and delivered the same to The Long-Bell Lumber Company (Tr. 19, 113-14, 117, Deft's Exs. 35A-H, Plff's Ex. 25).

Upon a part (about 3,000 acres, Tr. 345) of the land thus made available for development, The Long-Bell Lumber Company laid out the model city of Longview, Washington (Plff's Ex. B28 certified to this Court). In 1922 and the years immediately following, extensive public improvements were undertaken, including public buildings and parks, paved streets, sidewalks and a comprehensive sewer system (Plff's Exs. B25, B28 and B31 certified to this Court). To carry on this work and take over such improvements as had already been constructed by the Lumber Company or its subsidiaries, local improvement districts were organized under the Washington Local Improvement Act. In all, twenty-three such districts were organized, two of which, Nos. 11 and 19, covered the entire City of Longview, the others covering only parts thereof (Tr. 78, 118-19, Plff's Ex. B25).

These districts severally issued their special assessment bonds, due on or before twelve years from date, for the cost of the work. The bonds and interest thereon were payable out of taxes collected through special assessments levied by the districts against the lands within each district benefited by the local improvements (Plff's Ex. B1, Tr.

410). As the work was completed the bonds of the several districts were issued to the contractors who constructed the improvements, or to The Long-Bell Lumber Company where it had performed the work. Ultimately, all of the bonds of Districts Nos. 1 to 20, inclusive, came into the hands of the Lumber Company (Tr. 118-21).

In the summer of 1925 The Long-Bell Lumber Company approached respondent, which had already marketed several large timber bond issues for the Company, with respect to the purchase of some of these special assessment bonds. Respondent insisted that the bonds be unconditionally guaranteed as to both principal and interest by The Long-Bell Lumber Company (Tr. 74, 82, 120, Plff's Ex. P34). This was done, and in October, 1925 respondent offered to its customers $1,483,000 of Longview Local Improvement Districts Bonds. The offering circular discloses that no attempt was made to segregate the bonds of the various districts or to show what lands were included therein or the value thereof (Tr. 74, 80, 414-17). A general description of the development at Longview and a condensed balance sheet of The Long-Bell Lumber Company for the year 1924 were included in the circular. Subsequently, in June, 1926, respondent offered $908,699.57 of bonds of Longview Local Improvement District No. 11, issued in payment of the sewer system installed by one of the Long-Bell subsidiaries, This issue was advertised by a similar bond circular. The third and last issue, offered in March, 1927, was of $785,734.60 of Longview Improvement Districts Bonds of unidentified districts, and the offering circular contained the same general description of "Longview" and a consolidated balance sheet as of December 31, 1926, of The Long-Bell Lumber Corporation, the holding company which owned 99% of the capital stock of The Long-Bell Lumber Company and its subsidiaries (Tr. 410-13).

The information as to Longview embodied in the three circulars, and the balance sheet figures, were all obtained by respondent from The Long-Bell Lumber Company (Tr. 337-40). In fact, the descriptive matter about Longview contained in the last circular, which is the one on which petitioner claims to have relied, was dictated by the advertising manager for The Long-Bell Lumber Company, and incorporated practically word for word in the bond circular (Tr. 339, 615). The circulars were likewise submitted to Mr. Jesse Andrews, general counsel for the Lumber Company (Tr. 356), who was very familiar with the situation at Longview and who read the statement in the circulars under the caption "Longview" and approved the statement as both proper and accurate (Tr. 356).

As appears from the large map of Longview certified up to this Court (Plff's Ex. P33), an industrial area was laid out between the city limits of Longview and the Columbia River and the plants of the Long-Bell and Weyerhaeuser companies, and some of the other industrial plants subsequently built, are located in this industrial district. The port of Longview, providing access to the river and the public docks, is within the city limits. These facts as to the technical city limits of Longview were not known to Mr. Simond, who prepared the offering circulars, or to any of the other employees or officers of respondent until October of 1930, when information on that subject was obtained at petitioner's request (Tr. 340). Respondent relied entirely upon The Long-Bell Lumber Company, which had laid out the city and constructed it, for the physical facts as to the City of Longview (Tr. 340). Each circular before it was released was submitted to and approved by Long-Bell officials (Tr. 338).

All three issues of bonds were extensively advertised by respondent and were all sold to its customers (Tr. 84).

The last bond of the third and last issue was sold early in 1928 (Tr. 84, 340). At or about the time that respondent acquired its first block of Longview Local Improvement Districts Bonds, it also purchased from The Long-Bell Lumber Company the entire issue of Consolidated Diking District Bonds of a par value of $3,260,000, which were likewise guaranteed as to both principal and interest by The Long-Bell Lumber Company (Tr. 117). These bonds were sold publicly in 1925 by respondent and were widely advertised by circulars and in leading metropolitan papers (Tr. 345, 376). Most of the City of Longview was within the limits of the Diking District, which, however, extended far beyond the city limits, embracing much of the land in the valley between the Columbia and Cowlitz Rivers (Tr. 264).

In the carrying on of its general business as investment banker, respondent maintained a trading department through which it purchased bonds from its customers and others, which bonds it, in turn, resold (Tr. 99). Each week the trading department prepared a printed list of bonds on hand available for sale, referred to as "Bonds on Hand List", which it furnished to its several branch offices and salesmen. This list was supplemented by daily advices indicating the bonds still available for sale (Tr. 296).

The Bonds on Hand List for May 3, 1930 (Plff's Ex. 19, Tr. 574) disclosed $85,000 of Longview Local Improvement Districts Bonds of various districts on hand available for sale, which respondent had acquired in small lots through the ordinary trading operations of the firm (Tr. 373-4, Deft's Ex. 36, Tr. 617). Mr. Kelley was respondent's representative at Des Moines, Iowa, and periodically called on Mr. Hubbell, petitioner's Vice-President in charge of bond purchases. Shortly after the receipt of this list, Kelley called Mr. Hubbell's attention to these $85,000 of Improvement Districts Bonds. Mr. Hubbell was an experienced

bond buyer. He had been active in the purchasing of securities for the Equitable Life for some twenty years (Tr. 185) and had already purchased from the respondent, through Mr. Kelley, over $1,000,000 of municipal and utility bonds (Tr. 305-6, 612). In 1930, the Insurance Company held in its portfolio over $21,000,000 of bonds, of which over $13,000,000 par value were municipal bonds of various types (Deft's Ex. 1 certified to this Court). As appears from this exhibit, petitioner was buying "high rate municipals", including a large number of special assessment bonds of cities, districts and other municipal bodies.

Mr. Hubbell expressed an interest in the bonds and asked for additional information. Specifically, he requested the annual report of The Long-Bell Lumber Company for the year ended December 31, 1929 (Tr. 297, 315-16), a statement as to the amount of bonds of each issue that had been retired, some information as to the local improvement district laws of the State of Washington, and information covering the City of Longview in a general way (Tr. 296-97). None of this information was in Kelley's possession. He had never sold Longview Improvement Districts Bonds before and his sole knowledge of the issue was confined to the information contained in the original offering circular. He accordingly asked his home office to supply the requested data (Tr. 297, 314).

Everything which Mr. Hubbell requested was furnished to him by Kelley. About May 8, 1930, Kelley turned over a memorandum showing the total amount of each Longview improvement district issue, the amount of bonds called to date, and the last numbers called (Plff's Ex. B-23, Tr. 465). A few days later, on May 14, 1930, he turned over to Mr. Hubbell a digest of the Washington local improvement district laws (Deft's Ex. 2), a printed copy of the annual report of The Long-Bell Lumber Corporation and subsidiaries

for the year ended December 31, 1929 (Plff's Ex. B-34, Tr. 468), and a large package of documents which Mr. Wood, the sales manager for respondent in charge of the Iowa district, had taken directly from the buying file of the Chicago office of respondent and which contained the various showings which respondent had obtained from The Long-Bell Lumber Company in connection with its original purchase of the Improvement Districts Bonds (Tr. 341). This envelope contained Plff's Exs. B-25-32, inclusive, and are all certified to this Court for inspection. The more important of the documents so taken from respondent's buying file and delivered to the petitioner are referred to in petitioner's statement of the case. In describing Exhibit B-25 (Pet. Brief, p. 4) and the map appearing on the last page of this exhibit, petitioner fails to quote the entire legend indicating what this map discloses. The legend reads as follows:

> "A general layout of the entire Longview development, including the manufacturing plants of The Long-Bell Lumber Company. This layout is intended to show in a general way the relation of the various parts of the city site to each other and location of the city in relation to water, railroad and highway transportation facilities."

In short, this legend clearly indicates that the map is not a map purporting to show merely the City of Longview but the entire Longview development, including the industrial area.

Petitioner's Exhibit B-27 is an advertisement published by The Long-Bell Lumber Company in the Saturday Evening Post as a part of its national advertising program, and Exhibit B-28 a descriptive circular put out by the Chamber of Commerce of the City of Longview.

On the 14th of May, 1930, after all of the foregoing data had been submitted to Mr. Hubbell, he requested Kelley to

have respondent write a formal offering letter which he could submit to the Finance Committee of the Insurance Company. This was in accordance with the usual practice followed by Kelley and Hubbell in connection with all substantial purchases of securities (Tr. 299). It was in this connection that the letter (Plff's Ex. B-24, Tr. 466), a portion of which is quoted in petitioner's statement of facts was written. The "data covering this issue", to which Mr. Wood refers in his letter, was all of the material which he had sent to Mr. Kelley for transmission to Mr. Hubbell, including the package containing the buying file of Halsey, Stuart & Co. (Tr. 332). Wood did not, so he testifies, consciously withhold from the Equitable Life any information in his possession relative to the Longview Local Improvement Districts Bonds or The Long-Bell Lumber Company (Tr. 332).

Mr. Hubbell stated that he was well aware before he purchased any Longview Local Improvement Districts Bonds that these bonds were not funded obligations of the City of Longview, but were issued by separate improvement districts and secured by a tax lien upon the property within those districts (Tr. 193). It was testified by all of the witnesses familiar with the purchase and sale of municipal securities, including Mr. Hubbell (Tr. 186-87), that it was not the practice prior to 1932 or 1933 for investment houses, when purchasing municipal bonds, or for investors when buying such bonds, to make any inquiry as to overlapping municipal issues; that is, the existence of outstanding bond issues of other municipal bodies whose territory might overlap the territory of the particular municipality whose bonds were the subject of purchase or sale (Tr. 332-33). Mr. Hubbell also knew, before he purchased a single Longview Improvement Districts Bond, of the existence of Consolidated Diking District No. 1, of the amount of such bonds that were

then outstanding, of the purpose for which these bonds had been issued, and of the fact that they were secured by assessments payable in installments over a period of twelve years made by the Diking District against the land comprised within that district, and that the bonds were unconditionally guaranteed as to both principal and interest by The Long-Bell Lumber Company. All of these facts were disclosed in the audited statement of The Long-Bell Lumber Company and subsidiaries for the year ended 1929 (Pltff's Ex. B-34, Tr. 468-78).

From time to time during the summer and fall of 1930, as the respondent acquired additional Improvement Districts Bonds in its trading operations, these bonds appeared on its salesmen's Bonds on Hand Lists, and Kelley submitted such additional lots to Mr. Hubbell for consideration. Neither Mr. Kelley nor Mr. Hubbell recall any particular conversations relating to these purchases (Tr. 194, 320) until October of 1930, when a substantial block of improvement bonds of District No. 11 were available for sale and were submitted to Mr. Hubbell. At that time Mr. Hubbell inquired for the first time whether District No. 11 was coextensive with the city limits of Longview and whether the Long-Bell mills were located within the corporate limits of the city (Tr. 302). Mr. Kelley called for this information from the home office and Mr. Simond, of respondent's buying department, sent a wire to Longview requesting this information (Tr. 342). The reply from Mr. Hay of The Long-Bell Lumber Company was read to Mr. Kelley over the telephone (Tr. 327-8) and he, in turn, conveyed the information to Mr. Hubbell before the transaction for the purchase of these bonds was approved by the Finance Committee of the Equitable on October 17 (Tr. 538). The answers to Mr. Hubbell's questions were that District No. 11 was approximately coterminous with the corporate limits

of the City of Longview and that neither the Long-Bell nor the Weyerhaeuser mills were located within the corporate limits of the city (Tr. 302). Mr. Hubbell testified that Kelley always furnished him with all information which he requested and that he cannot recall anything that he asked for in the way of information, either from Halsey, Stuart & Co., Longview or The Long-Bell Lumber Company, which Kelley did not get for him (Tr. 197).

Petitioner purchased from respondent, during the period from May 17, 1930, to February 26, 1931, a total of $353,000 of Longview Improvement Districts Bonds distributed among nine different districts (Tr. 617). At the time petitioner instituted its suit this amount had been reduced to $308,000 through the payment and retirement of bonds by the several districts (Tr. 10). At the time of the trial petitioner's holdings had been further reduced through bond retirements to $266,000 (Tr. 617). Up to the time of trial petitioner had received by way of interest on the Longview bonds which it had purchased from respondent a total of $130,337.34. Contrary to the assertion in petitioner's statement of facts (p. 13) that the Lumber Company defaulted in 1931 in the payment of local improvement assessments on practically all of the improved lots and lands in the various local improvement districts, the facts are that sufficient collections of assessments were made by the several districts so that, at the time of trial, interest coupons falling due in 1936 and, in some cases, in 1937 and 1938 had been paid in full (Tr. 623).

The bonds which respondent sold to petitioner were bought on the market from investors, financial institutions and dealers (Tr. 619) during the period from October 9, 1929, to December 8, 1930, at prices only a point or two below the prices at which the bonds were resold to petitioner, except with respect to one lot of bonds purchased on

October 9, 1930, where, due to special circumstances (Tr. 287-8), respondent was able to purchase bonds at 89 (Tr. 617). During the year 1930 respondent bought for its own account a total of $495,000 of Longview Districts Bonds and resold a total of $516,000. Moreover, respondent continued to buy these bonds well into 1931, using its own money and buying them for its own account (Tr. 100, 619).

In May of 1931 Mr. Hubbell sent his assistant, James Windsor, to the West Coast to investigate various securities held by petitioner in that territory (Tr. 199). Mr. Windsor spent some time at Longview, Washington, and under date of June 3, 1931, submitted a written report to petitioner. This report makes only the most casual reference to the Long-Bell and Weyerhaeuser mills, using the following language:

> "While neither the Long-Bell or Weyerhaeuser mills or any of their important subsidiaries are within the city limits, it is true that almost all of their employees live here and buy here" (Tr. 539).

He concluded his report with the observation that if "the slump ends and lumber booms we have a good investment", but if "the depression lasts for another year and lumber stays sour and Long-Bell gets into deeper water, we have a decided risk here". Following the receipt of this report, Mr. Hubbell from time to time requested respondent to furnish him with additional information regarding the local improvement districts (Tr. 308). Every request so made was complied with by respondent. If the information was not available at its Chicago office, letters were written to Long-Bell officials at Longview and copies transmitted to Mr. Hubbell (Tr. 200). Mr. Hubbell admits that by the middle of 1931 he was fully advised as to all the facts as to Longview and The Long-Bell Lumber Company, which the complaint alleges the respondent fraudu-

lently and maliciously concealed prior to the sale of the bonds (Tr. 201).

The statement in petitioner's brief (p. 14) that petitioner made complaint to Kelley in the Summer or Fall of 1931 that it had been imposed upon in the transaction does not accurately state Mr. Hubbell's testimony. When pressed as to what he had said to Kelley on this subject, Mr. Hubbell admitted that he could not recall what he had said and could not recall ever having said to Kelley or any representative of respondent that respondent had defrauded the petitioner (Tr. 201). Kelley testified that no complaint was ever made by Mr. Hubbell to him at any time that any facts had been misrepresented or concealed by respondent in the sale of the Longview Local Improvement Districts Bonds (Tr. 308-9). In any event, after Mr. Hubbell states that he was fully advised as to all of the facts now alleged to have been misrepresented or concealed, he continued to buy bonds from respondent. During 1931 Kelley sold the petitioner, through Mr. Hubbell, $1,561,000 of bonds of various issues, during 1932 $201,000, during 1933 $104,000, and in March, 1934 $50,000, or a total of approximately $2,000,000 (Tr. 305-6, Deft's Ex. 26, Tr. 612). In November, 1931 Mr. Windsor submitted a written report to Mr. Hubbell in which Mr. Windsor stated that he had made a careful check of the correspondence and offering sheets of respondent in regard to the Local Improvement District Bonds, and that such check "fails to disclose any misstatements on their part" (Plff's Ex. B-56, Tr. 493). No letters were ever written by petitioner to respondent complaining or even intimating that any misstatements had been made or that any material facts had not been disclosed in connection with the sale of these bonds until August, 1934, shortly prior to the institution of this suit, when a letter was written by counsel for the petitioner outlining its claim (Tr. 379-80).

At the beginning of the year 1930 The Long-Bell Lumber Company had assets in excess of $100,000,000, with $50,000,000 in surplus. The year 1929 had been a fairly prosperous year. The Company looked forward to an improvement in business for 1930, despite the market break in the Fall of 1929 (Tr. 347-8). The financial officers of the Company in 1930 made a forecast of earnings through the year 1931 which showed that, with no improvement in business, the Company could go through the year without increasing its bank borrowings, paying all obligations as they matured (Tr. 352).

For some years The Long-Bell Lumber Company had had a $9,000,000 line of credit with various banks throughout the country. When the officers of the Company made their annual trip in the Spring of 1930 to visit the commercial banks, one bank in St. Louis declined to renew its $500,000 line (Tr. 348). The suggestion was then made by one of the officers of the Chase National Bank in New York that, to avoid uncertainty as to the Company's future available credit, a wholly owned subsidiary corporation be formed to which the Company would convey certain of its unencumbered assets, which new company would assume the bank indebtedness and secure a binding agreement from all the banks to extend a definite line of credit for a definite period of time (Tr. 349). This suggestion was made in May, 1930, but was not given serious consideration by the officers of Long-Bell until the latter part of July (Tr. 349). About the middle of September, it was decided by Long-Bell officials that this was a desirable step for the Company to take, and a draft of a syndicate loan agreement was prepared (Tr. 350). Subsequently, in October or November, The Long-Bell Lumber Sales Corporation was organized.

Notice of the formation of the Sales Corporation and of the transfer of assets to it appeared in many papers

throughout the country and in lumber periodicals, and written notice was given to all creditors of the Lumber Company whose names appeared upon its books (Tr. 150, 367). The transaction was made effective as of November 1, 1930, although the actual transfers of property to the Sales Corporation were not made until December 9, 1930 (Tr. 350-1). In the judgment of the officers of The Long-Bell Lumber Company, the formation of the Sales Corporation and the assumption by it of the current liabilities of the Lumber Company, aggregating some $7,000,000, was a desirable thing to do and a step which would greatly strengthen the credit position of the Company (Tr. 350, 370).

However, the Long-Bell officials, like many other people, failed to appreciate the extent to which the depression would affect the lumber business. There was a continuous decline in price and volume of consumption of lumber beginning in 1930 and continuing through 1931 and 1932, in which year the production of lumber in the United States was less than in any year since 1860. The Company could not realize the cost of production from the price of the timber (Tr. 355-6).

So far as the officers of respondent were concerned, they had no part whatever in the formation of The Long-Bell Lumber Sales Corporation. Mr. Stuart, the President, has no recollection of having had any conversation regarding the proposed organization of the Sales Corporation with Long-Bell officials before the actual formation of the corporation (Tr. 95-6, 101, 103). Mr. Shrader, Vice-President of the respondent, first learned of the formation of the Sales Corporation after the consummation of the transaction in the Fall of 1930 (Tr. 168). Neither Mr. Stuart nor Mr. Shrader regarded the formation of the Sales Corporation as reflecting upon the financial integrity or solvency of The Long-Bell Lumber Company (Tr. 101,

167-8). Neither Mr. Stuart nor Mr. Shrader had anything whatever to do with the original purchase of Longview Local Improvement Districts Bonds or with the sales to the Equitable or other customers of the firm (Tr. 101, 156, 167).

The stock of The Long-Bell Lumber Corporation, the holding company, was listed on the New York Stock Exchange and consequently quarterly consolidated earnings statements were filed with the Exchange and made available to the public generally. The earnings reflected in these statements were reported in the financial journals and newspapers in Kansas City and elsewhere (Tr. 145, 355). These quarterly statements were likewise sent to respondent (Tr. 146). In a few instances it also received special cumulative earnings statements prepared by the Company's office, as for the three months ending March 30, 1930, four months ending April 30, 1930, and five months ending May 31, 1930 (Tr. 159). All of these statements for 1930 disclosed that The Long-Bell Lumber Company was losing money, although considering the size of the Company the losses were not great (Plff's Ex. 19-B, Tr. 449, Plff's Ex. B-20, Tr. 454, Plff's Ex. B-21, Tr. 458). The earnings of the Company for each quarterly period during 1930 were reported in at least three financial publications which were received by the Equitable Life Insurance Company at its home office in Des Moines—The Analyst, Barron's Weekly, and the Chicago Journal of Commerce (Tr. 203-4, Deft's Exs. 39-45, 49-50, certified to this Court).

None of the financial transactions of The Long-Bell Lumber Company during 1930, to which reference is made in petitioner's statement of the case, was regarded by the officers of respondent as anything more "than the efforts of a well managed company, in view of the conditions in 1930 and the then period of time, to put itself in a more

liquid position" (Tr. 100). The sale of the Longview, Portland & Northern Railroad Company, for which the contract was made in February, 1930, and which was consummated in November, 1931, was a most favorable sale in which the Lumber Company realized the full cost of the railroad (Tr. 353-4). The sale of the electric light plant in Longview in July of 1930 was likewise a sale for cash, in which The Long-Bell Lumber Company realized its full cost (Tr. 354). This was such a favorable transaction that Mr. Stuart wrote the Chairman of the Board of The Long-Bell Lumber Company a letter congratulating him on this advantageous sale (Plff's Ex. B-12, Tr. 441). Likewise, the efforts of The Long-Bell Lumber Company to increase its cash position by loans on the Longview Daily News (Tr. 164) and the timber contracts with Lamm and Kesterson were regarded by respondent's officers as a legitimate effort on the part of the Company to further increase its current cash position. As Mr. Shrader, Vice-President of respondent, testified, none of these transactions "then or at any time indicated to me in the slightest that the Long-Bell was in distress or financial peril or anything of that kind" (Tr. 167). "I had not the slightest doubt of the solvency and ultimate success of the Long-Bell at that time" (Tr. 166). As a result, respondent continued to purchase, with its own money and for its own account, not only the Longview Improvement Districts Bonds guaranteed by The Long-Bell Lumber Company but the first mortgage and other direct obligations of Long-Bell throughout 1930 and well into 1931 (Tr. 100).

In 1933, after The Long-Bell Lumber Company had been unable to meet the interest on its bonds and committees were being formed for the protection of its various classes of security holders, Mr. Hubbell had a number of conferences with Mr. MacNeille, Vice-President of respondent,

and with other representatives of holders of improvement districts and diking district bonds regarding the formation of committees to represent such bonds and various plans for the reorganization of The Long-Bell Lumber Company. Finally, in the summer of 1934, Mr. Hubbell went with Mr. MacNeille to Longview, Washington, and there conferred for several days with representatives of other interested groups (Tr. 378-9). Mr. Hubbell finally agreed to serve as one member of a committee representing improvement districts bonds (Tr. 379) and wrote Mr. MacNeille several letters approving a tentative plan to waive the guaranty of The Long-Bell Lumber Company on the improvement bonds and accept in lieu thereof the guaranty of one of the subsidiary real estate holding companies at Longview (Deft's Exs. 17 and 18, Tr. 570-3). At no time during these extended negotiations did Mr. Hubbell ever say to Mr. MacNeille that respondent had in any respect misrepresented the Longview bonds at the time of their sale to the petitioner or failed to disclose any facts regarding the condition of the Long-Bell Company (Tr. 379).

Late in August of 1934, after The Long-Bell Lumber Company had made application to the Federal Court at Kansas City for reorganization under Section 77B (Tr. 137), petitioner for the first time presented its claims against respondent (Tr. 379-80). The claim then made, and later confirmed in writing, was confined to two charges: (1) that the statements contained in the original offering circular (Plff's Ex. B-1, Tr. 411-12) that Longview had a frontage of 7¼ miles on the Columbia River and that "Because of its natural advantages and proximity to the timber stands of the Long-Bell and Weyerhaeuser interests, Longview was selected as the site of the vast lumber manufacturing plants of these companies" were false; and (2) that the statement in Mr. Wood's formal offering letter of May 14,

1930 (Plff's Ex. B-24, Tr. 466) to the effect that "this city has no funded debt, other than these Improvement Bonds" led the petitioner to believe that no assessment bonds of any other municipal body, such as the Consolidated Diking District, were outstanding, the assessments to pay which were spread against lands within the City of Longview (Tr. 381). No claim was made that respondent had concealed or failed to disclose any facts or circumstances regarding Longview or the financial condition of The Long-Bell Lumber Company (Tr. 379-80).

Some seven months later (Tr. 2), and approximately four years and eleven months after the alleged misrepresentations were made, this suit was filed. Eight months after this suit was brought, the Equitable Life Insurance Company was still carrying its Longview Local Improvement Districts Bonds on its books at 85% of their par value. The Equitable's 69th Annual Report to its policyholders for the year ending December 31, 1935, stated that all the Company's investments were carried at a conservative valuation and that the $272,000 par value of Longviews then held were worth $231,200 (Tr. 202, Deft's Ex. 8), although the complaint sworn to by Mr. Hubbell in *April, 1935* stated that the $308,000 of Longview Improvement Bonds then held by the Equitable were worth not to exceed the sum of $60,000 (Tr. 15-16, 202).

SUMMARY OF ARGUMENT

I.

Respondent does not contend, nor did the Circuit Court of Appeals find, that the so-called "hedge clause" in the original offering circular relieved respondent from liability for misrepresentations falsely or recklessly made. The court below properly found that the record was devoid of proof that respondent made the statements contained in the circular either with knowledge of their inaccuracy or recklessly.

A.

The proper function and scope of the "hedge clause" was to advise petitioner that the statements contained in the circular were not made by the respondent of its own knowledge, but were based upon information furnished by others and believed by respondent to be accurate. Such qualification was unnecessary as to Exhibits B-25, B-27 and B-28, which on their face disclosed that they were statements made by the Long-Bell Lumber Company, one of its subsidiaries, and The Longview Chamber of Commerce.

Readinger v. *Rorick*, 92 Fed. (2d) 140, 144 (Certiorari denied, 302 U. S. 758).

Southern Development Co. v. *Silva*, 125 U. S. 247, 257.

B.

The contention that the statement in the "hedge clause" that respondent relied upon the information contained in the circular in its purchase of the bonds is a misrepresentation, because respondent would not have bought the bonds but for the unconditional guaranty of Long-Bell, is patently unsound and an attempt to read into the language used a meaning not justified by the context.

C.

There is no basis on the record in this case for the contention that respondent made any statements regarding "Longview" as of its own knowledge or that it made such statements recklessly.

Distinguishing:

Hansen v. *Kline*, et al., 136 Ia. 101, 113 N. W. 504.

Davis v. *Central Land Co.*, 162 Ia. 269, 143 N. W. 1073.

Haigh v. *White Way Laundry Co.*, 164 Ia. 143, 145 N. W. 473.

Ultramares Corp. v. *Touche, Niven & Co.*, 255 N. Y. 170, 174 N. E. 441, 447.

II.

Fraud is never to be presumed. It must be affirmatively proved by such clear and convincing evidence as leaves the mind well satisfied that the charges are true. For this positive requirement of proof, petitioner asks this court to adopt the principle that fraud may be presumed when it appears that the one charged with fraud might have discovered the facts by pursuing a line of inquiry other than that which was followed.

Seymour v. *Chicago & Northwestern Ry. Co.*, 181 Ia. 218, 164 N. W. 352.

Dallas Real Estate Co. v. *Groves*, ... Ia. ....., 292 N. W. 152, 155.

Under Iowa law, the essential elements of an action for deceit are: That the representation was made, that it was false, known at the time to be false, made with intent to mislead plaintiff, relied upon by plaintiff to his damage, and no negligence in so relying:

Smith v. *Packard & Co.*, 152 Ia. 1, 130 N. W. 1076, 1077.

Kuehl v. *Parmenter*, 195 Ia. 497, 192 N. W. 429, 430.

Andrew v. *Darrow Trust, etc.*, 205 Ia. 244, 216 N. W. 551, 552.

Gray v. *Shell Pet. Corp.*, 212 Ia. 825, 237 N. W. 460, 463.

Gipp v. *Lynch*, 226 Ia, 1020, 285 N. W. 659, 662.

III.

The record contains no proof that respondent made any false statements or spoke any "half truths" regarding the financial condition of the Long-Bell Lumber Company. Petitioner's complaint is that respondent did not voluntarily disclose to petitioner every detail regarding Long-Bell's condition which came to respondent's knowledge during the year 1930. No such duty was imposed upon respondent under the Iowa law.

Gamet v. *Haas*, 165 Ia. 565, 146 N. W. 465-6.

Boileau v. *Records & Breen*, 165 Ia. 134, 144 N. W. 336, 338.

Sherman v. *Harbin*, 125 Ia. 174, 100 N. W. 629.

Magee v. *Manhattan Life Ins. Co.*, 92 U. S. 93, 99.

Foreman v. *Dugan*, 205 Ia. 929, 218 N. W. 912, 914.

Benedict v. *Hall*, 201 Ia. 488, 207 N. W. 606, 607.

Boyd v. *Miller*, 210 Ia. 829, 230 N. W. 851, 855.

Cleaveland v. *Richardson*, 132 U. S. 318, 329.

Distinguishing:

Noble v. *Renner*, 177 Ia. 509, 159 N. W. 214.

Tyler v. *Savage*, 143 U. S. 79, 97.

Stewart v. *Wyoming Cattle Ranche Co.*, 128 U. S. 383.

Laidlaw v. *Oregon*, 2 Wheat. 178.

McDonald v. *de Fremery*, 142 Pac. 73, 176 Pac. 38.

Downey v. *Finucane*, 205 N. Y. 271, 98 N. E. 391.

A.

Respondent, having furnished to petitioner the exact information regarding the Long-Bell Lumber Company which was requested, does not become guilty of fraudulent concealment by failing to voluntarily disclose subsequent financial transactions of Long-Bell. Especially is this so where, in the judgment of respondent's officers, there were no developments adversely affecting Long-Bell's guaranty of the Improvement Districts bonds or which caused respondent to cease the purchase of these bonds for its own account.

Distinguishing:

Noble v. *Renner*, 177 Ia. 509, 159 N. W. 214, 217.

Loewer v. *Harris*, 57 Fed. 368, 372.

IV.

Under Iowa law the rule of *caveat emptor* is applied whenever the parties are dealing at arm's length and there is no evidence of fraudulent concealment. In the instant case there was no evidence of false or equivocal statements made by respondent regarding Long-Bell's financial condition. The court, therefore, properly applied the Iowa law in holding that respondent was under no duty to voluntarily disclose facts coming to its knowledge.

Gamet v. *Haas*, 165 Ia. 565, 146 N. W. 465.

Wagner v. *Standard Seed Tester Co.*, 194 Ia. 1330, 191 N. W. 314, 315.

Distinguishing:

Foreman v. *Dugan*, 205 Ia. 929, 218 N. W. 912.

Noble v. *Renner*, 177 Ia. 509, 159 N. W. 214.

Iasigi v. *Brown*, 17 Howard 183.

Thermoid Rubber Co. v. *Bank of Greenwood*, 1 Fed. (2d) 891.

V.

The construction to be placed on an alleged written representation, as well as the materiality of such representation, are questions of law for the court. The Circuit Court of Appeals was right in the construction which it placed on Wood's letter of Ma[illegible] 14, 1930, and the undisputed proof shows that petitioner did not rely on the statement as a representation that there were no outstanding bonds of any other municipal body which were a charge upon lands within the several Improvement Districts.

Readinger v. *Rorick*, 92 Fed. (2d) 140, 144.

Baker v. *Mathew*, 137 Ia. 410, 115 N. W. 15, 19.

Rand v. *Michaud*, 122 Me. 65, 118 Atl. 893, 895.

Nat'l Bank of Pawnee v. *Hamilton*, 202 Ill. App. 516, 522-3.

Bower, Actionable Misrepresentation, Art. 31 and Commentary thereon in Sec. 4.

Hembey v. *Cornelius* (Ark.), 31 S. W. (2d) 539, 540.

VI.

The Circuit Court of Appeals did not decide that petitioner's negligence could be pleaded as a defense to fraudulent representations or affirmative concealment of material facts, nor was its decision based on that principle. The remarks of the court to which petitioner calls attention were incidental to its discussion of the total failure of the proof to establish fraudulent concealment.

VII.

The judgment of the Circuit Court of Appeals reversing and remanding the cause for a new trial is fully justified, not only because the proofs relied upon are insufficient to sustain the action, but also because of the trial court's errors in the admission of evidence and instructions to the jury and because of the total failure of proof as to the amount, if any, of the petitioner's damages. All of these questions were presented fully to the Circuit Court of Appeals.

U. S. v. *American Ry. Express Co.*, 265 U. S. 425, 435.

Morley Co. v. *Maryland Casualty Co.*, 300 U. S. 185, 191.

Stoke v. *Converse*, 153 Ia. 274, 133 N. W. 709, 711.

Kuehl v. *Parmenter*, 195 Ia. 497, 192 N. W. 429, 431.

Smith v. *Middle States Utilities Co.*, 224 Ia. 151, 275 N. W. 158, 162.

A.

Many of the Court's instructions, particularly those on the question of damages, were erroneous and highly prejudicial to respondent.

Otte v. *James,* 200 Ia. 1353, 206 N. W. 613.

Garvey v. *Chicago Rys. Co.,* 339 Ill. 276, 171 N. E. 271.

Benham v. *Heath,* 77 Ind. App. 91, 133 N. E. 179.

Gallagher v. *Singer Sewing Machine Co.,* 177 Ill. App. 198.

Waldman v. *Sanders Motor Co.,* 214 Ia. 1139, 243 N. W. 555, 560.

Smith v. *Middle States Utilities Co.,* 224 Ia. 151, 275 N. W. 158.

B.

The trial court erred in admitting evidence as to events and happenings long subsequent to 1930, and in no way shown to be the direct or proximate result of the alleged misrepresentations or concealments, for the purpose of establishing the value of Longview Local Improvement Districts bonds at the time of their purchase in 1930.

Baumchen v. *Donahoe,* 215 Ia. 512, 242 N. W. 533.

Carlson v. *Burg,* 137 Minn. 53, 162 N. W. 889.

O'Hara v. *Derschug,* 241 App. Div. 513, 272 N. Y. S. 189, 198.

David v. *Belmont,* 291 Mass. 450, 197 N. E. 83, 85.

Southern Bldg. & Loan Assoc. v. *Wales,* 224 Ala. 40, 138 So. 553, 555.

Southern Bldg. & Loan Assoc. v. *Bryant,* 225 Ala. 527, 144 So. 367, 368.

Danielson v. *Skidmore*, 125 Ark. 572, 189 S. W. 57, 58.

Munson v. *Fishburn*, 183 Cal. 206, 190 Pac. 808.

cf. *Healy* v. *Ginoff* (Mont.) 220 Pac. 539.

Singleton v. *Harriman*, 152 Misc. 323, 272 N. Y. S. 905, 906 (Aff'd 241 App. Div. 857, 271 N. Y. S. 996).

People v. *S. W. Straus & Co.*, 156 Misc. 642, 282 N. Y. S. 972, 980.

C.

There was no evidence before the jury from which it could possibly determine the amount of petitioner's damages, and the trial court erred, therefore, in not directing a verdict for the respondent.

Perry Fry Co. v. *Gould*, 214 Ia. 983, 241 N. W. 666, 669.

Doyle v. *Union Bank & Trust Co.*, 102 Mont. 563, 59 Pac. (2d) 1171, 1174.

Otte v. *James*, 200 Ia. 1353, 206 N. W. 613.

Harris v. *Shear* (Tex.) 177 S. W. 136, 137.

Kinnear v. *Prows*, 81 Utah 135, 16 Pac. (2d) 1094.

ARGUMENT

I.

Respondent does not contend, nor did the Circuit Court of Appeals find, that the so-called "hedge clause" in the original offering circular relieved respondent from liability for misrepresentations falsely or recklessly made. The court below properly found that the record was devoid of proof that respondent made the statements contained in the circular either with knowledge of their inaccuracy or recklessly.

We have no quarrel with the rules of law discussed by petitioner under Point I. Of course, a vendor of securities cannot make statements knowing the same to be false, or recklessly, without any effort to check their accuracy, and then seek protection under a hedge clause which advises the purchaser that the statements are based upon information which the seller regards as reliable. In the instant case, however, as the Court properly found, "there is no proof that appellant knew of the falsity of the statements" (Tr. 667). Nor is there the slightest evidence that respondent proceeded recklessly in the preparation of the circular. On the contrary, the most meticulous care was exercised to have each circular checked by Long-Bell officials and Long-Bell's general counsel.

When respondent's officer in charge of the preparation of bond circulars began the preparation of a circular for the first issue of Longview Local Improvement District Bonds, he naturally turned for a description of the Longview community to the most authoritative source of information of which he knew—The Long-Bell Lumber Company, which had founded, laid out and built the City of Longview. The data regarding Longview was obtained "from the Long-Bell Lumber Company, from their office

in Kansas City and from their office in Longview" (Tr. 337). After the preliminary circular for the first issue was prepared, it was submitted to the home office of The Long-Bell Lumber Company in Kansas City for approval and, after changes and corrections, the final draft was likewise submitted for Long-Bell's approval. The same process was followed with each of the other circulars describing Longview Local Improvement Districts Bonds. "No circulars were released until they had had the approval of the Long-Bell Lumber Company" (Tr. 338).

With respect to the circular, a copy of which was received by Mr. Hubbell prior to the purchase of any bonds (Plff's Ex. B-1, Tr. 410), the check was even more complete. The description of "Longview" contained in that circular was dictated by Mr. Kendall, in charge of the advertising department of Long-Bell (Deft's Exs. 33, 33A, Tr. 615) and incorporated almost word for word in the circular (Tr. 339). Kendall had been head of Long-Bell's advertising department for a number of years and had visited Longview prior to the date of the preparation of this circular. Mr. Jesse Andrews, of Baker, Botts, Andrews & Wharton, general counsel for Long-Bell, had participated very actively since 1918 in both the legal and business affairs of the Company (Tr. 346) and from 1923 to 1930 was frequently in Longview—in fact, almost every other month (Tr. 362). Mr. Andrews passed upon the statement in the circular under the caption "Longview" and regarded the statement as both proper and accurate (Tr. 356). The uncontradicted proof, therefore, establishes the care and diligence exercised by respondent to obtain from the most authoritative source an accurate description of "Longview". No court on this record could have found that any statement contained in this bond circular was recklessly made, and the talk in petitioner's brief about "reckless statements and

representations, without knowledge as to their truth or falsity" is without a shadow of support in the record.

Nor has the charge that respondent had actual knowledge that some of the statements in the circular were inaccurate any basis whatever in the evidence. Mr. Simond, who prepared the three offering circulars, had no knowledge that the information furnished to him by Long-Bell was not absolutely accurate until the 17th of October, 1930 (Tr. 340). On October 16, 1930, as the Court will recall, Mr. Simond sent a telegram to Mr. Hay, tax agent for the Long-Bell at Longview, Washington, requesting, among other things, information as to whether Long-Bell's mills were in District Eleven (Tr. 342, Deft's Ex. 22, Tr. 609). Mr. Hay replied that neither the Long-Bell nor Weyerhaeuser mills were within District Eleven or the city limits (Deft's Ex. 23, Tr. 609). This request emanated from the petitioner and the reply was relayed by Mr. Kelley on October 17, 1930, to petitioner's office (Tr. 342, 328, 303). The very fact that Simond sent this wire to Long-Bell requesting information as to the location of Long-Bell's mills is definite confirmation of his testimony that up to that time he had no information on that subject such as appeared in the offering circulars.

So far as Simond knew, no one connected with respondent had any other or different information than he did on the subject (Tr. 340). The record is barren of proof that knowledge as to the city limits of Longview or what, if any, industrial plants were within the city limits, was ever brought home to any representative of respondent prior to October 17. Counsel for petitioner do not contend otherwise, except as they argue that the presence of several of respondent's officers in Longview during the early days of the city's history gave them an opportunity to discover the facts. Mr.

MacNeille and Mr. Shrader, Vice Presidents of respondent, visited Longview during the period from 1922-24 in connection with the first mortgage on Long-Bell's timber lands and had nothing to do with either the sale or purchase of Improvement Districts bonds (Tr. 218-19, 167). Mr. Sheep long since deceased, was present when the first contract for the purchase of the Longview Local Improvement Districts Bonds was signed. The testimony of Mr. Morris, Vice President of Long-Bell, resident at Longview, clearly shows that neither the subjects of the city limits of Longview nor the location of the industrial plants with reference thereto were ever discussed with any of these gentlemen when they were at Longview (Tr. 218).

Moreover, there was no occasion for any of these officers of respondent to make inquiry upon a subject in which respondent then had no vital interest. Because the City of Longview was in its infancy and as yet undeveloped, the respondent purchased the bonds in reliance upon Long-Bell's unconditional guaranty (Tr. 81) and sold the bonds to its customers placing the emphasis squarely upon the guaranty and without a showing in the circular, which would otherwise have been made, as to land values, population and other pertinent data (Tr. 81). Certainly the fact that respondent might have discovered additional facts regarding Longview, had there been any occasion for it to make such further inquiry, cannot be substituted for clear and convincing proof that it did acquire such knowledge.

Counsel for petitioner further complain because respondent's counsel did not ask Mr. Shrader or Mr. MacNeille, when on the stand, what they knew about the city limits of Longview. Since neither of these gentlemen had anything whatever to do with the original purchase or subsequent sale of the Improvement bonds, such a question would naturally

not have been addressed to them. But, in any event, the burden rested on petitioner to establish its case. Petitioner called most of respondent's officers as its own witnesses and could have asked them these questions if deemed material. The duty did not devolve on respondent to prove a negative.

Under the well settled law of Iowa, scienter is an essential element of an action for deceit (This brief pp. 20-1, 41). We submit that the Circuit Court of Appeals, applying the Iowa law, could have reached no other conclusion than the one which it did reach, that "there is no proof that appellant knew of the falsity of the statements" (Tr. 667). What the court said about the effect of the "hedge clause" must be considered, therefore, in the light of what the court had already found to be the facts—that respondent did not knowingly or recklessly make any untrue statements in its circulars. The "hedge clause" performs, however, a perfectly proper and lawful function.

A.

The proper function and scope of the "hedge clause" was to advise petitioner that the statements contained in the circular were not made by respondent of its own knowledge, but were based upon information furnished by others and believed by respondent to be accurate. Such qualification was unnecessary as to Exhibits B-25, B-27 and B-28, which on their face disclosed that they were statements made by the Long-Bell Lumber Company, one of its subsidiaries and The Longview Chamber of Commerce.

Mr. Hubbell testified that he read all of the bond circular (Plff's Ex. B-1) and was aware of the fact that the statements contained therein were based upon information which respondent had obtained from others. Furthermore, as an experienced bond buyer, he said that he "knew that it was the practice, and of necessity so, of investment houses in securing information regarding the properties of a com-

pany upon which the securities were being issued, to secure that information from the issuing company" (Tr. 188). It must be obvious, therefore, that Mr. Hubbell did not rely on the description of "Longview" contained in the circular as a statement made or purported to be made by respondent of its own knowledge. He knew that the data was supplied by others and probably came from The Long-Bell Lumber Company or one of its subsidiaries.

The importance of the "hedge clause", therefore, is that it removes this case completely from that class of cases where a seller has been held liable for material statements which he purports to make as of his own knowledge, when in fact the information was obtained from others and subsequently proves to have been incorrect.

There was, of course, no need to advise Mr. Hubbell that the statements contained in the booklet issued by the Longview Company (B-25), in the copy of The Long-Bell Lumber Company's advertisement in the Saturday Evening Post (B-27) or in the descriptive booklet put out by the Longview Chamber of Commerce (B-28) were not statements made by respondent of its own knowledge. The documents spoke for themselves. They were, in fact, part of the very data upon which respondent relied in preparing some of the bond circulars (Tr. 338).

Moreover, having clearly told petitioner in the bond circular that the description of Longview was obtained by respondent from others and, while believed to be accurate, was not guaranteed, it would indeed be strange if petitioner could claim that the same information contained in advertising booklets obviously put out by others were nevertheless statements which petitioner had a right to believe were being made by respondent of its own knowledge.

A case similar in many respects on its facts to the instant case was decided in 1937 by the Circuit Court of Appeals

for the Sixth Circuit—*Readinger* v. *Rorick*, 92 Fed. (2d) 140 (certiorari denied, 302 U. S. 758). An action at law was brought against an investment house to recover the purchase price of securities sold to the plaintiff. The right of recovery was based on alleged false representations and concealment of facts inducing the purchase. Reliance was placed on statements made in the bond circular claimed to be misleading and inaccurate, among others the statement that the bonds were very well secured, yielding an exceedingly high tax free return. The Court considered this representation in connection with the "hedge clause" in the circular, which read:

> "The statements contained in this circular are based upon official and other information which we consider reliable but are not to be considered as representations or guarantees by us"—

and said, p. 144:

> "With reference to a somewhat similar clause, it was held in *Saupe* v. *St. Paul Trust Co.*, 170 Minn. 366, 212 N. W. 892, 893, that 'as a general rule, one who qualifies his representations by the use of language indicating that they are based on information and belief, and who honestly believes the representations to be true, is not guilty of actionable fraud, although in fact they proved to be untrue.' See, also, *Southern Development Co.* v. *Silva*, 125 U. S. 247, 8 S. Ct. 881, 31 L. Ed. 678. The evidence shows that this clause embraced no idle or reckless statement. It does not show by that clear, unequivocal, and convincing proof which is requisite (Maxwell Land-Grant Case, 121 U. S. 325, 381, 7 S. Ct. 1015, 30 L. Ed. 949) that defendants believed it was untrue."

The language of the court in *Readinger* v. *Rorick*, *supra*, applies with even greater force to the case before this Court. The affirmative evidence of the respondent, uncontradicted by any evidence offered by petitioner, discloses that as re-

spects the statements in the circular there was no scienter, no intention to deceive, no knowledge by respondent of any inaccuracy in the statements from which scienter might be inferred, and certainly no reckless disregard by respondent as to their truth or falsity. This Court, in one of the decisions cited in the above quotation from *Readinger* v. *Rorick—Southern Development Co.* v. *Silva*, 125 U. S. 247, said (p. 257): "The law raises no presumption of knowledge of falsity from the single fact *per se* that the representation was false"—yet that is precisely what petitioner is asking this Court to do.

B.

The contention that the statement in the "hedge clause" that respondent relied upon the information contained in the circular in its purchase of the bonds is a misrepresentation, because respondent would not have bought the bonds but for the unconditional guaranty of Long-Bell, is patently unsound and an attempt to read into the language used a meaning not justified by the context.

It is clear from a reading of the entire "hedge clause" (Tr. 413) that respondent states three things: (1) that the information set forth in the circular was obtained from outside sources, (2) that, while not guaranteed, respondent believes the statements to be reliable and accurate, and (3) that respondent has relied upon the truth and accuracy of these statements in buying the bonds. The sole purpose of the clause "We ourselves have relied upon them in the purchase of this security" is to give point and emphasis to respondent's statement that it believed the statements to be reliable. Petitioner seeks to read into the statement a meaning obviously not intended—that the reason, and the sole reason, which induced respondent to buy the bonds was the statement in the circular describing generally "Longview". Respondent was not purporting to state in the "hedge

clause'' the reasons which actuated it in purchasing the bonds but merely the fact that, when it bought the bonds, it relied upon the accuracy of the facts set forth in the circular.

Moreover, petitioner overlooks entirely the fact that the ''hedge clause'' qualifies the entire circular, which contains not only the general description of ''Longview'' but also statements that principal and interest were unconditionally guaranteed by Long-Bell, that the bonds were exempt from Federal income taxes, and a balance sheet of The Long-Bell Lumber Company and subsidiaries for the year ended December 31, 1926 (Tr. 411-13). Admittedly, all of these facts were of great importance and relied upon by respondent in purchasing the bonds. The statements in the ''hedge clause'', even if construed as petitioner seeks to construe them, were true and accurate. Respondent did rely on the facts set forth in the circular when it purchased the bonds.

As a matter of fact, respondent also relied in its original purchase on the assessments levied against lands in the several districts for the added value which that gave to the bonds (Tr. 82), but, because the City of Longview was only in the initial stages of development, would not have purchased the bonds or sold them to its customers without the unconditional guaranty of Long-Bell (Tr. 83).

We are not clear just what point petitioner seeks to make under subdivision I. B. of its brief (pp. 27-8). If it is now being suggested that the statements in the ''hedge clause'' constitute an additional affirmative misrepresentation upon which petitioner can rely, the complete answer to such suggestion is that petitioner's pleadings purport to allege specifically all of the claimed misrepresentations and fraudulent concealments relied upon (Tr. 16-36), and it is certainly too late in this Court to inject into the case a claimed misrepre-

sentation upon which an issue was not presented by the pleadings and which was never considered by the trial court or presented to the jury.

C.

There is no basis on the record in this case for the contention that respondent made any statements regarding "Longview" as of its own knowledge or that it made such statements recklessly.

We have already pointed out that the "hedge clause" clearly advised petitioner that the statements contained in the circular were not being made by respondent of its own knowledge. Mr. Hubbell, petitioner's Vice President, not only read the "hedge clause" but frankly admits that he understood its purpose and effect (Tr. 188). The same statements, in substance, that appear in the circulars were contained in the advertising matter put out by The Long-Bell Lumber Company, The Longview Company and the Longview Chamber of Commerce. By no stretch of the imagination could Mr. Hubbell have understood these to be statements made by respondent of its own knowledge and certainly not when Hubbell was told by the "hedge clause" that the same statements in the circular were made upon information received from others and believed to be reliable. There is no denial of any of these facts. There was, therefore, no issue to submit to the jury as to whether the description of "Longview" was stated by respondent as of its own knowledge. The uncontradicted facts show that it did not do so.

It is likewise true that there was no issue to go to a jury as to whether or not respondent made the statements concerning "Longview" recklessly and without exercising due care. Even assuming that such an issue was presented by the pleadings (which it was not; Tr. 16-36) and assuming that negligent misrepresentation is actionable under the

law of Iowa (which it is not; this Brief, pp. 20-1, 41), the meticulous care exercised by respondent in checking the accuracy of its circulars with Long-Bell officials and general counsel effectively disposes of the charge that it made any statement in the circulars recklessly. We have already commented upon these facts. They stand uncontradicted in the record.

The Iowa cases, cited by petitioner, therefore, have no application whatever to the facts in the instant case. They were all actions in which the defendants were charged with making some affirmative statement of fact as of their own knowledge, which later proved to be false and misleading.

In *Hansen* v. *Kline, et al.*, 136 Ia. 101, 113 N. W. 504, the evidence of the plaintiff disclosed that the defendants both represented that the farm in question was good farm land; level, partly fenced and improved with a small house, barn and windmills, and worth $1,900. One defendant advised the plaintiff that he need not go and see the farm "because what I say you can believe". The other defendant stated "he knew it was good land just like he said". All of the statements regarding the farm were substantially untrue and, while defendants had never seen the farm and so advised plaintiff, it does not appear that they had any information in their possession which justified the representations which they made so definitely and positively. The Court very properly said in the course of its opinion that the defendants, having positively asserted that they had information concerning the farm when in fact they had no such information, were guilty of actionable fraud. They knew such representation to be false when made. The court, in fact, reversed the judgment for the plaintiff because of errors in the trial court's instructions. The excerpt quoted from the court's opinion in petitioner's brief, p. 29, clearly indicates what the Iowa court would decide when presented

with facts such as those disclosed by the record before this Court—where respondent, after a careful check, merely repeated, as information received from others, facts which were actually so received and which the uncontradicted proof shows respondent believed to be true and accurate.

In *Davis* v. *Central Land Co.*, 162 Ia. 269, 143 N. W. 1073, one of the defendants represented as of his own knowledge that a lot, the subject matter of the sale, extended to a rear alley, when in fact the lot ended 35 feet short of the alley. The agent did not qualify his statement in any respect by a showing that he was merely reporting information furnished by others. The facts were that he had no knowledge on the subject. This case presents the typical situation where a defendant asserts as of his own knowledge a fact concerning which he has no information. Such facts, of course, present actionable fraud, for as the Iowa court observes, p. 1075: "One who makes a statement under such circumstances can have no real belief in the truth of what he states."

The case of *Haigh* v. *White Way Laundry Co.*, 164 Ia. 143, 145 N. W. 473, illustrates the same legal principle. There the Court held that a pleading stated a cause of action in fraud where it alleged that defendant's agent, to induce the execution of a release, had positively asserted that plaintiff's injuries were trifling and that the tendons of her hand were not injured. There was no qualification whatever in the statement made by defendant's agent. He asserted a fact as of his own knowledge, as to which he apparently had no knowledge whatever.

The principle on which these Iowa cases were decided is sound. A seller cannot assert a material fact as of his own knowledge and then take refuge in the defense that he in fact knew nothing. There is no room for the application

of such a principle to the facts in the instant case. Here no statements as to Longview were made by respondent as of its own knowledge and respondent believed and had every right to believe that the circular was accurate and reliable, since every circular was subjected to a check and recheck by those persons who of all persons in the world knew the most about Longview.

The case of *Ultramares Corp.* v. *Touche, Niven & Co.*, 255 N. Y. 170, 174 N. E. 441, was decided, as appears from the excerpt from the opinion quoted in petitioner's brief (p. 37), upon precisely the same principle as the Iowa cases just reviewed. The defendants made a statement as true of their own knowledge, when they had, or at least a jury might find they had, no knowledge on the subject. The defendants in that case were certified public accountants charged with the duty of auditing the books of Fred Stern & Co. and certifying to the correctness of that company's balance sheet. The positive assertion of the auditors that the balance sheet accorded with the accounts of the defendant was not qualified in any way by a notice that this statement was based upon information furnished by others. It was a flat statement as of the auditors' own knowledge.

Mr. Justice Cardozo, (then Judge Cardozo) after rejecting the doctrine that the defendants could be held liable for negligent misrepresentation, laid down the true rule as follows, p. 447:

> "The extension, if made, will so expand the field of liability for negligent speech as to make it nearly, if not quite, coterminous with that of liability for fraud. Again and again, in decisions of this court, the bounds of this latter liability have been set up, with futility the fate of every endeavor to dislodge them. Scienter has been declared to be an indispensable element, except where the representation has been put forward as true

of one's own knowledge (*Hadcock* v. *Osmer*, 153 N. Y. 604, 47 N. E. 923), or in circumstances where the expression of opinion was a dishonorable pretense."

Counsel's assertion that no officers or employees of Long-Bell ever informed respondent that the industrial plants were within the corporate limits of Longview is an equivocal statement. If, as petitioner contends, the bond circular stated that these industrial plants were within the city limits of Longview, then certainly the examination of every preliminary and every final circular by Long-Bell's officers and employees and the approval of such circulars by its general counsel was equivalent to a definite assertion that all facts stated in the circulars were true and accurate. Likewise, the printed statements of The Long-Bell Lumber Company and Longview Company which were received by respondent and used in preparing the circulars contained definite statements by Long-Bell concerning the location of the industrial plants.

The statement that no executive officer of Halsey, Stuart & Co. testified that he believed the mill properties were within the city limits is equally equivocal. When Mr. Simond testified that at no time (prior to October 17, 1930) did he have any other or different information regarding the location of the mills than was contained in the circular, he most certainly affirmed his belief at all times in the accuracy of the facts there set forth. Petitioner repeatedly advances the argument throughout its brief that the duty rested on respondent to examine each executive officer of respondent as to his belief regarding the location of the city limits of Longview, despite the fact that they had no connection with the purchase or sale of these bonds. The law presumes on honest intent on the part of corporate officers performing their regular and legitimate corporate functions. The duty devolved on petitioner, which was

charging fraud, to prove by clear and unequivocal testimony a fraudulent intent. The charge that respondent acted recklessly in preparing its original bond circulars fails not only because of a total lack of proof to support the charge but because respondent's undisputed affirmative proof discloses the exact contrary.

II.

Fraud is never to be presumed. It must be affirmatively proved by such clear and convincing evidence as leaves the mind well satisfied that the charges are true. For this positive requirement of proof, petitioner asks this Court to adopt the principle that fraud may be presumed when it appears that the one charged with fraud might have discovered the facts by pursuing a line of inquiry other than that which was followed.

The Iowa law as to the essential elements of an action for deceit is not in doubt. The Supreme Court of Iowa in *Seymour* v. *Chicago & Northwestern Ry. Co.*, 181 Ia. 218, 164 N. W. 352, succinctly delimited the action as follows, p. 354:

> "In an action for damages by false representations the plaintiff has the burden of proving that the representations claimed were made, were false, known at the time to be false, were made with intent to mislead plaintiff; that there was reliance and damage, and no negligence in relying. *Gee* v. *Mass.*, 68 Iowa, 318, 27 N. W. 268; *Nason's Case*, 140 Iowa, 536, 118 N. W. 751; *Kilmartin's Case*, 137 Iowa, at 67, 114 N. W. 522; *Johnson* v. *Railway*, 107 Iowa, at 7, 77 N. W. 476."*

In the very recent case of *Dallas Real Estate Co.* v. *Groves*, ... Ia. ....., 292 N. W. 152, the Supreme Court of Iowa reviewed the Iowa decisions touching the burden which rests upon one who charges fraud and said, p. 155:

*For additional references see Summary of Argument.

"We quote from the case of *Johnson* v. *Tyler*, 175 Iowa 723, 157 N. W. 184, 187:

'It is also well settled that courts will not grant relief on the ground of fraud unless the fraud alleged and relied upon, and which if proven would justify the court in doing so, is established by clear, convincing, and satisfactory evidence.' See, also *Epps* v. *Dickerson*, 35 Iowa 301; *Ley* v. *Metropolitan Life Ins. Co.*, 120 Iowa 203, 94 N. W. 568.

A mere preponderance of the evidence is not sufficient. *Edmunds* v. *Ninemires*, 200 Iowa 805, 204 N. W. 219; *Clark* v. *Beck*, 208 Iowa 156, 225 N. W. 353

Fraud is not presumed. And in this class of cases, especially where title to real estate is involved, it must be established by clear, convincing, and satisfactory evidence. *Schrimper* v. *Chicago, M. & St. P. Ry. Co.*, 115 Iowa 35, 82 N. W. 916, 87 N. W. 731; *Harvey* v. *Phillips*, 193 Iowa 231, 186 N. W. 910; *Edmunds* v. *Ninemires*, supra; *Epps* v. *Dickerson*, supra; *Johnson* v. *Tyler*, supra."

Applying these elementary principles to the evidence which petitioner asserts "justified a finding by the jury that respondent well knew the falsity of the statements in the offering circular" (p. 32), we find that petitioner is relying solely on presumptions. The jury, so petitioner asserts, should have been allowed to *presume* that respondent had knowledge of inaccuracies in the circular because some of respondent's officers when in Longview could have easily found out the exact facts or because Mr. Simond knew that the early assessed values of the lands in the several districts, just then emerging from raw farm land, was very low. This is precisely what the Iowa courts, and all other courts for that matter, have said should not be done in an action sounding in fraud.

Petitioner seemingly forgets that before respondent issued its first circular it asked The Long-Bell Lumber Com-

pany, in effect, if the statements in the circular were correct. It re-asked that question as it submitted each preliminary and final circular to Long-Bell for approval. It had the assurance of the Long-Bell officials, including its general counsel, that the statements were correct. By the very fact of its satisfactory business dealings with Long-Bell, respondent relied and was justified in relying on Long-Bell's approval of the circulars, knowing that Long-Bell was the founder and builder of the city. Why should it be presumed that, after having received definite confirmation from Long-Bell as to the accuracy of the facts set forth in the circular, Halsey, Stuart & Co. officials when in Longview would again make inquiry as to the same subject matter? Particularly is this true when it is remembered that Mr. MacNeille and Mr. Shrader had nothing whatever to do with the purchase of these bonds and were in Longview on matters in no way related thereto.

As a matter of fact, it does not appear that either Mr. Shrader or Mr. MacNeille were in Longview at any time after negotiations for the purchase of the Longview Local Improvement Districts Bonds were initiated. Mr. Shrader's first trip was before the city was built (Tr. 153), his second and last was in April 1924 (Tr. 167), more than a year before the purchase of the first districts bonds. Mr. MacNeille was out in Longview two or three times during the early stages of construction of the city (Tr. 214)—in 1922 and 1923 and "possibly a year or two later" (Tr. 228). So far as Mr. Sleep is concerned, Mr. Samuel Morris, the Vice-President of Long-Bell in charge of Longview operations, has no recollection of ever having seen or talked to him in Longview (Tr. 218, 228). In any event, Mr. Morris testified that "No questions were asked by representatives of Halsey, Stuart & Co. regarding the location of the industrial plants or regarding the amount of frontage on

the Columbia River or any of the other details with respect to the lay-out of the City of Longview" (Tr. 218). This testimony definitely negatives the presumptions and inferences upon which petitioner relies.

The information received by Mr. Simond regarding early assessed values of lands in some of the districts conveyed no knowledge to him as to the location of the industrial plants. The valuations received in 1925 covered only Districts 1 to 8 and had been determined nearly two years prior to 1925, when the land was farm property (Tr. 79-80). The only subsequent information received by Mr. Simond related to the assessed valuations for the City of Longview as a whole, which conveyed no information whatever as to the actual land values (Tr. 83) and certainly nothing as to what industrial plants were and what were not within the city limits. To allow a jury to presume knowledge of allegedly false statements in the circulars from such evidence would indeed be an extension of the law of deceit far beyond its adjudicated boundaries. The Circuit Court of Appeals did not, as petitioner suggests, substitute its own judgment as to the weight of evidence for the judgment of the jury. It merely found, as the record required it to find, that there was no proof whatever of knowledge on the part of respondent, and certainly nothing which rose to the dignity of clear, convincing and satisfactory evidence.

A number of statements are made by petitioner under Point II which are subject to challenge. For instance, the assertion (p. 35) that "the mill properties of the Long-Bell Lumber Company constitute a very substantial part of the security for the Lumber Company's first mortgage bond issues". No record pages are referred to for support of this statement and we can find none. It does appear that two of these bond issues, secured by Long-Bell's vast timber holdings, came out in 1922 and 1923 (Tr. 115), which

was before the Longview mills were constructed. It seems unnecessary, however, to burden the Court with further argument. When every alleged fact is examined and every argument considered, petitioner's Point II boils down to nothing more than a contention that the jury in a fraud action should be allowed to presume knowledge on respondent's part that the facts were not what The Long-Bell Lumber Company stated them to be. The essential requirement of proof of knowledge is blithely dispensed with by petitioner and conjecture and inference offered as a substitute therefor.

Moreover, all talk about respondent intentionally misstating the facts in its circular regarding "Longview" is patently absurd. Why should respondent, all other considerations aside, have had the slightest interest in misrepresenting any facts regarding the City of Longview? Admittedly, the Local Improvement Bonds were not advertised and were not sold by respondent on the basis of the land values in each district. The whole emphasis in selling the bonds was placed on the Long-Bell guaranty, since at best the city was in its initial stages of development. It could have made no possible difference to respondent, therefore either in purchasing or selling the bonds, whether certain industrial sites were within or without the technical city limits. The fact that respondent, two and three years after the last of these improvement districts bonds had been marketed, continued to buy large amounts of the bonds for its own account and to pay high prices for them (Tr. 617-9) indicates more clearly than any mere statement of witnesses could do its complete trust and confidence in The Long-Bell Lumber Company and reliance on the accuracy and truth of the representations made by that company.

III.

The record contains no proof that respondent made any false statements or spoke any "half-truths" regarding the financial condition of the Long-Bell Lumber Company. Petitioner's complaint is that respondent did not voluntarily disclose to petitioner every detail regarding Long-Bell's condition which came to respondent's knowledge during the year 1930. No such duty was imposed upon respondent under the Iowa law.

The charge made by petitioner in its amended complaint is that respondent wilfully, fraudulently and falsely concealed the true financial condition of The Long-Bell Lumber Company from the petitioner (Tr. 32). To establish fraudulent concealment, where there is no fiduciary relationship, there must be much more than a mere failure to communicate facts within the knowledge of the seller. There must be evidence of affirmative concealment—words or acts on the seller's part which tend affirmatively to a suppression of the truth. The Circuit Court of Appeals correctly stated the Iowa law on this subject when it said (Tr. 669):

> "The cases which hold that failure to disclose material information constitutes fraudulent concealment sufficient to maintain an action for fraud generally are based on such facts as the existence of a fiduciary relationship between the parties, or the doing of some affirmative acts to prevent the other party from making adequate investigation to discover the true facts."

The adherence of the Iowa courts to this fundamental rule is illustrated by the case of *Gamet* v. *Haas*, 165 Ia. 565, 146 N. W. 465, which was an action at law for damages on account of alleged fraud in the sale of the capital stock of a milling company. The petition alleged that in making the sale the defendant knowingly and with intent

to deceive neglected to apprise plaintiff of the indebtedness of the company, although that fact was well known to the seller. The court held that there was no duty on the part of the seller to disclose facts as to the financial condition of the corporation so long as there was no fiduciary relationship between the parties and no effort made by the seller to prevent the buyer's acquiring the fullest information. The court said (p. 466):

> "Nor does there appear any merit in the allegation that defendant withheld information concerning the assumed indebtedness. The undertaking to pay it was the consideration paid for the property acquired, and at the time of the transaction in controversy only the $3,400 owing Mrs. McHenry remained unpaid. This was no mentioned, nor did plaintiff make any inquiries as to what the company owed, or concerning its title to the property. There was no fiduciary relation; they dealt at arm's length, and the record is void of any circumstance which might obviate the application of the doctrine of *caveat emptor.*"

So in *Boileau* v. *Records & Breen,* 165 Ia. 134, 144 N. W. 336, a verdict was directed against the plaintiff, who claimed damages for fraud, alleging that the defendant had concealed the facts as to the incompetency of a certain grantor, which incompetency was known to the defendant and prevented title passing by the tax deed purchased by plaintiff from defendant. In affirming, the court said (p. 338):

> "When a vendor by quitclaim deed make false representations upon which the buyer relies, he cannot escape liability for his fraud. *Ballou* v. *Lucas,* Ad'm, 59 Iowa 22, 12 N. W. 745. But the rule as thus stated does not apply without qualification, when concealment is the basis of the charge of fraud. Mere silence as to a material fact is not necessarily, as a matter of law, equivalent to a false representation, and in the absence

> of a duty to speak it is not of itself ground for an action of deceit. 20 Cyc. 15. When the relations between the parties are of a confidential nature, under which one has the right to rely upon the good faith of another, and if there be a concealment of a material fact, within the knowledge of the vendor, and which the vendor is bound in good faith to disclose, such may amount to actionable fraud. But when the subject-matter of the representation or concealment is one as to which the purchaser has equal and available means of information, he must make use of them, and in failing to do so he cannot recover on the grounds that he was misled. *Boddy* v. *Henry*, 113 Iowa 463, 85 N. W. 771, 53 L. R. A. 769. These statements of general rule are but the expressions of many authorities, and are so well settled that extended citations are unnecessary."

In the early case of *Sherman* v. *Harbin*, 125 Ia. 174, 100 N. W. 629, which involved alleged fraudulent concealment by an obligee on a surety bond, the court quoted with approval from a decision by the Supreme Court of South Carolina and from the language of this Court in *Magee* v. *Manhattan Life Ins. Co.*, 92 U. S. 93, as follows:

> " 'There must be an intent to deceive, not a mere passive omission to state everything within the knowledge of the creditor. The intent is the gist of the fraud, and this should be made to appear.' In *Magee* v. *Manhattan Life Ins. Co.*, 92 U. S. 93, at 99, 23 L. Ed. 699, the court said: 'A fraudulent concealment is the suppression of something which the party is bound to disclose. To constitute fraud, the intent to deceive must clearly appear.' "*

It is conceded that no fiduciary relationship existed between petitioner and respondent. The parties were dealing at arm's length. Mr. Hubbell was a bond buyer of many years' experience, having purchased for his company millions of dollars of special assessment, as well as other

*For other Iowa cases to the same effect see Summary of Argument.

types of municipal bonds (Tr. 188, Deft's Ex. 1). Respondent was but one of fifteen investment houses from which the petitioner was purchasing securities in 1930 (Tr. 186).

As the Circuit Court of Appeals properly finds (Tr. 669), the only word or act which petitioner can point to as sustaining its claim that respondent intentionally concealed the financial condition of The Long-Bell Lumber Company from petitioner is the statement in Wood's formal offering letter of May 14, 1930:

> "We *believe* you have before you practically all the data covering this issue of bonds, but if you have *any question* in mind, we shall be pleased indeed to have you call Mr. Kelley or this office for *anything you may need*" (Italics ours) (Tr. 466).

The Court will recall the circumstances under which this statement was made. Mr. Wood had furnished to petitioner not only all the specific data which it had requested, such as The Long-Bell Lumber Corporation audited report for the year ended December 31, 1929, a digest of the Washington improvement district laws, and a statement as to the bonds of all districts retired and those still outstanding, but had also sent to Iowa for delivery to petitioner the contents of Halsey, Stuart & Co.'s own buying file. This was an unusual step in supplying a prospective customer with information, and something which, so far as Wood could recall, had never been done before. "To that extent we went very much further in the matter of furnishing information than would be customary and usual in such a sale" (Tr. 331).

Having supplied petitioner with all the "data covering the issue" which he could lay hand to, it was most natural and proper for Mr. Wood to express the belief that petitioner now had before it "practically all the data covering this issue of bonds". That such was Wood's honest

belief is undisputed. He testified that he did not "consciously withhold from the Equitable Life Insurance Company of Iowa any information which I had in my possession relative to The Long-Bell Lumber Company or its financial condition" (Tr. 332). Mr. Wood, by the way, was a disinterested witness, having left respondent's employ many years before the trial (Tr. 334).

To call such a statement, honestly made, an intentional effort to mislead petitioner and conceal facts from it is indeed a perversion of the record without justification. To say that Wood's statement was calculated to persuade petitioner to forego an additional independent investigation on its own account is to disregard the plain request of respondent that "if you have *any question* in mind, we shall be pleased indeed to have yau call Mr. Kelley or this office for *anything you may need*". The Circuit Court of Appeals could not, we submit, have properly reached any other conclusion than the one stated in its opinion—"We think this cannot be construed as a deliberate attempt to throw appellee off its guard or mislead it into failing to pursue its inquiries further" (Tr. 670).

Much is said by petitioner's counsel about "half-truths" spoken regarding Long-Bell's financial condition, but none are pointed to in the record. There were none. Respondent furnished to petitioner *exactly what it asked for.* Hubbell's request was specifically for the Long-Bell annual report for the year ended December 31, 1929. He asked for no other financial data (Tr. 297, 315-16). Hubbell admits "that during the period between May 1, 1930 and May 17, 1930, which was the date the Finance Committee approved the purchase of $85,000 or $100,000 of these bonds, Mr. Kelley gave me any information I asked for and, as a matter of fact, that continued to be so not only prior to the purchase of these bonds but prior to the purchase of any

subsequent L. I. D. bonds, and prior and subsequent to the purchase of all bonds'' (Tr. 192).

It is not contended that the audited report of Long-Bell for the year ending 1929 is in any respect inaccurate. No questions were asked by petitioner regarding Long-Bell's financial condition and no statements, written or verbal, were made by respondent on this subject. Just what application can be made by respondent of the much discussed doctrine of ''half-truths'' on such a record we are at a loss to understand. Incidentially, as the Circuit Court of Appeals points out (Tr. 668), the annual report of Long-Bell gave petitioner much more than the financial picture of the Company at the end of the year 1929. It pointed out the falling off in the lumber business due to business conditions and the break in the stock market, and stated that indications were not flattering for the immediate future (Tr. 468). The report showed that the Company had no taxable income for the year 1929 (Tr. 474).

In answer to petitioner's argument that respondent was advised during the year 1930 of facts regarding The Long-Bell Lumber Company's financial condition which led respondent's officers to doubt the soundness and worth of Long-Bell's guaranty of the improvement districts bonds, it is sufficient to point out that nothing which respondent's officers learned regarding Long-Bell during 1930 was regarded by them as reflecting adversely on Long-Bell's financial condition. The steps which Long-Bell took to improve its current financial position were regarded by respondent's President as ''nothing more than the efforts of a well-managed company, in view of the conditions in 1930 and the then period of time, to put itself in a more liquid position'' (Tr. 100), which in his opinion did not reflect upon the integrity or solvency of the Long-Bell Company (Tr. 101). As Mr. Shrader, respondent's Vice-President,

pointed out, none of these transactions "then or at any time indicated to me in the slightest that The Long-Bell Lumber Company was in distress or financial peril, or anything of that kind" (Tr. 167). "I had not the slightest doubt of the solvency and ultimate success of The Long-Bell Lumber Company at that time" (Tr. 166).

The best business judgment at the time dictated the procedure followed by Long-Bell. The sales of capital assets not needed in Long-Bell's business, such as the railroad and the electric light plant, at prices which brought into the Company's treasury its full investment in these properties, were naturally regarded by Long-Bell officials and respondent's officials alike as most favorable sales for the Company and a legitimate strengthening of its current position to meet the unfavorable conditions of 1930 (Tr. 353-4). It was most natural, therefore, that Mr. Wood should write to Mr. Hubbell, when he heard about the sale of the Longview, Portland & Northern Railroad, and tell him the good news (Plff's Ex. B-40, Tr. 483). Mr. Hubbell frankly admits that he was familiar with business conditions in 1930 and knew that not only the lumber business but most large industries were suffering from the general effects of the depression (Tr. 202).

So far as the current financial condition of the Lumber Company was concerned, the information was public property. Quarterly statements were furnished the New York Stock Exchange, made available to the daily press, and published in all the principal financial journals, at least three of which were taken and read by the petitioner (Tr. 145-6, 355, Deft's Exs. 39-45, 49-50).

The sincerity of respondent's officers in their belief that nothing occurred during 1930 which adversely affected Long-Bell's financial condition is amply demonstrated by the fact that respondent continued throughout 1930 and

well in to 1931 to buy for its own account and with its own funds substantial blocks of Longview Improvement bonds, as well as other Long-Bell issues (Tr. 100, 619).

On the record before this Court, petitioner's charge of fraudulent concealment must rest upon the failure of respondent to *voluntarily disclose* to petitioner information which respondent acquired during 1930 bearing upon the financial condition of The Long-Bell Lumber Company and which respondent honestly believed reflected favorably upon the Company's financial position. The authorities relied upon by petitioner indicate how far the Iowa authorities and the authorities generally fall short of supporting the thesis that a mere failure to disclose constitutes fraudulent concealment.

Noble v. *Renner,* 177 Ia. 509, 159 N. W. 214 (Pet. brief, p. 43), involved much mor than a mere failure to disclose. In that case, as the Court of Appeals points out (Tr. 669), there was a direct affirmative misrepresentation. The case was not decided on the ground that the defendant merely failed to disclose a changed condition in the land, but on the ground that he affirmatively represented that there had been no more cutting of the bank and by affirmative acts and words sought to conceal the change from plaintiff. This is clearly pointed out in the portion of the opinion quoted in petitioner's brief (p. 44), where the Court says:

> "Is there not more here than a mere case of silence which amounts to a failure to state that which both knew or had equal means of knowing? Is there not affirmative concealment intended to lead another to his injury? * * * It is undenied, too, that defendant was not content with mere silence. It appears that on May 2, before the contract was signed, defendant told Noble there was no cutting there any more; that there would be a little sloughing of the bank in the Spring when the frost was going out."

Noble v. *Renner* is inapplicable to the facts in the instant case where, at most, all that respondent did was fail to voluntarily inform petitioner of everything it learned during 1930 relating to The Long-Bell Lumber Company.

The case of *Tyler* v. *Savage*, 143 U. S. 79, (Pet. Brief, p. 46) bears no resemblance to the instant case. There one Tyler, to induce the purchase by the plaintiff of stock in the Virginia Oil Company, represented that the last dividend declared was a 7% semi-annual, that the fiscal year ended on the first of June, that the prospects of the company were flattering, and that its manufactures paid a large profit, when in fact the company was insolvent and known by Tyler to be so. On a bill filed for an accounting and other relief, the court held Tyler liable, saying (p. 97):

> " * * * the statement of the decree that the company was represented to the plaintiff by Tyler, its president, to be in a flourishing condition, when in fact it was insolvent, is a sufficient support of the allegations of fraud made in the bill."

The court, in discussing the further representation made by Tyler with regard to the declaration of a dividend, used the language quoted by counsel on page 47 of petitioner's brief. Tyler had made an equivocal statement regarding the amount of the last dividend paid and the date when the fiscal year ended, which was well calculated to lead the plaintiff to believe that 7% dividends were then being paid and would be paid in June. Such a statement, coupled with the other false statements made about the company and Tyler's knowledge of its insolvent condition, was properly characterized as equivalent to a false representation.

None of the elements present in *Tyler* v. *Savage* is present in the case at bar. Respondent did not make an equivocal statement regarding Long-Bell's financial condition.

On the contrary, it presented to petitioner exactly what petitioner requested.

Stewart v. *Wyoming Cattle Ranche Co.*, 128 U. S. 383, 32 L. Ed. 439, (Pet. Brief, p. 47) is similar to the case of *Laidlaw* v. *Organ*, 2 *Wheaton* 178, 4 L. Ed. 214, which is cited by petitioner in its summary of argument. Both cases involve a series of *affirmative* fraudulent acts designed to deceive. In other words, there was an *active* attempt to mislead plaintiff by requesting him not to make inquiries concerning the truth of the defendant's statements. Here again there is presented a case of a party fraudulently and improperly preventing the plaintiff from procuring the information requested. The language cited at p. 48 of Petitioner's brief is exactly in accordance with the law, i.e., that there must be a duty to speak or an intentional and conscious misleading of the plaintiff. The evidence in these cases clearly disclosed a series of false representations by the defendant and a deliberate design to mislead the plaintiff by throwing "unreasonable obstacles in his way to prevent his procuring the information that he sought and that he desired" (p. 386).

The case of *McDonald* v. *de Fremery*, 142 Pac. 73, (Pet. Brief, p. 48) and the same case later reported in 176 Pac. 38, involved an affirmative representation known by the defendants to be false at the time it was made. In that case the defendants, who were officers of the bank and fully advised as to its condition, gave the plaintiff what purported to be a summary of a report, with the statement that it "correctly set forth the financial condition of the bank as shown by the books of the bank". As a matter of fact, not only was this statemnt false, but the purported summary was not in fact a truthful and accurate summary, since it failed to set forth material facts regarding the bad debts and worthless and overdue paper of the bank, all

of which were disclosed in the actual report in the bank's possession. This, of course, involves a clear case of a direct affirmative misrepresentation, as well as an affirmative concealment, by representing to the plaintiff that the summary correctly set forth the substance of the report. There is no possible relationship between the facts which were before the Court in that case and the facts in the instant case.

In *Downey* v. *Finucane,* 205 N. Y. 271, 98 N. E. 391, (Pet. Brief, p. 49) the promoters of a corporation were held liable for a prospectus which they caused to be prepared and issued, containing, among others, the statement that the company "owns a franchise in the City of New York acquired under the advice of eminent counsel, under which it is its purpose to begin as soon as practicable, and in the near future, the construction of an independent telephone system in that city". The facts were that the franchise had only been used for a burglar alarm system, that in order to become effective it required the consent of the common council of New York City, which had not been obtained, and that all of these facts were known to the defendants. There were other material misstatements in the circular, but this clear misstatement, knowingly made, was enough to justify the submission of the case to a jury.

This and similar cases cited by petitioner were characterized by the Circuit Court of Appeals as involving "obvious and flagrant falsities under circumstances permitting of no doubt as to the maker's knowledge" (Tr. 672). A decision upon such a state of facts falls far short of being an authority for the plaintiff's proposition that the failure of Halsey, Stuart & Co. to advise the plaintiff of all facts and circumstances coming to its attention regarding the financial affairs of Long-Bell constituted a

fraudulent representation which plaintiff was entitled to submit to a jury as such.

In *Foreman* v. *Dugan*, 205 Ia. 929, 218 N. W. 912, cited by petitioner at page 44, the Supreme Court sustained the action of the trial court in directing a verdict for the defendant, although the undisputed evidence showed that the defendant had failed to disclose the fact that in previous years a ditch on the farm, which was the subject matter of sale, had overflowed and flooded the land. The Court said, 218 N. W., p. 914:

> "The appellant *made no specific inquiry in regard to the ditch* and was truthfully informed by the vendor with regard to the overflow from the river. Under the record in this case, the appellant did not make a case to go to the *jury without proof of a false representation knowingly made by the vendor,* by express words *or failure to speak when required to do so,* with regard to a material matter." (Italics ours)

It is this case which, reflecting a factual situation at least similar to that of the case at bar, enunciates the correctly applicable Iowa rule.

A.

Respondent, having furnished to petitioner the exact information regarding The Long-Bell Lumber Company which was requested, does not become guilty of fraudulent concealment by failing to voluntarily disclose subsequent financial transactions of Long-Bell. Especially is this so where, in the judgment of respondent's officers, there were no developments adversely affecting Long-Bell's guaranty of the Improvement Districts Bonds or which caused respondent to cease the purchase of these bonds for its own account.

Petitioner predicates its argument under Point III A upon the assumption that positive representations were made by respondent regarding the financial condition of The Long-Bell Lumber Company as of May, 1930. It is

then argued that subsequent developments in the Long-Bell financial picture imposed upon respondent the legal duty of advising petitioner of all such developments. As we have already pointed out in some detail in this brief, the assumption upon which petitioner proceeds is false. No representations whatever were made by respondent concerning the financial condition of The Long-Bell Lumber Company. It merely furnished to petitioner the information which it requested, as reflected in the audited report of the Lumber Corporation and subsidiaries for the year ended December 31, 1929.

No decision of any court has been cited by petitioner where, on such a state of facts, the seller has been held liable for fraudulent concealment for mere failure to voluntarily disclose subsequent information coming to his knowledge.

But in the instant case we have the added fact that the record discloses without dispute that no information regarding Long-Bell came to respondent which, in the opinion of respondent's officers, adversely affected the financial position of The Long-Bell Lumber Company. At no time during the year 1930 did respondent learn "that the Lumber Company's guarantee had become seriously impaired" (Pet. Brief, p. 53). It did learn that *one* commercial bank out of the nine which were extending the Lumber Company a total line of credit of $9,000,000, had withdrawn its line of credit for $500,000 sometime in the Spring of 1930 (Tr. 3448); that later in the year The Chase National Bank of New York, *which was not then a creditor* of the Lumber Company, had suggested—not demanded—that the Lumber Company consider the strengthening of its credit position by forming a separate corporation to take over certain free assets and do all the bank borrowing for the Company (Tr. 349); that this suggestion was first given serious

consideration by Long-Bell officials in the latter part of July or the first of August, 1930 (Tr. 349), and in the middle of September it was decided that the formation of such a company was a desirable thing to do (Tr. 350), and the Sales Corporation was organized and the assets turned over to it on December 9, 1930, effective as of November 1, 1930 (Tr. 351).

Respondent further learned during 1930, as we have already pointed out, of the steps taken by Long-Bell, in view of business conditions then facing all industries, to improve its current cash position by the sale, on a most favorable basis, of the L., P. & N. Railroad and the Longview power plant(Tr. 353-4, Plff's Ex. B-12), and the further efforts to increase its cash reserved by borrowing on some large timber sales contracts and a newspaper property in Longview.

To call respondent's failure to volunteer any of the above information to petitioner during 1930 a fraudulent concealment of facts is to extend the law of intentional frauds beyond any of the boundaries heretofore defined by the courts. Certainly the one Iowa case relied upon by petitioner—*Noble* v. *Renner,* 177 Ia. 509, 159 N. W. 214—does not support such a doctrine. The short excerpt from the opinion of the Court in that case, cited at p. 52 of petitioner's brief (which is, in fact, a quotation from 20 Cyc., p. 24), must be considered in connection with the facts that the Court was passing upon. There, as we have already indicated, the Court properly found not only an affirmative false representation—that there had been no more cutting of the bank since plaintiff inspected the farm—but statements by defendant amounting to affirmative concealment, by inducing plaintiff to make no further investigation. The basis of the Iowa court's decision is clear. It said, p. 217:

> "It is a case of what is, in effect, false token. It is not different in principle than bargaining to sell a hotel building, sending the proposed buyer to look at it, having him find that the building is somewhat racked and would not stand heavy winds, learning later that a wind had blown it to the ground and scattered the fragments, *affirmatively telling the buyer before he contracts that the building was substantially as it was when he saw it*, and claiming that, though there was no building when the purchase was completed, yet there could be no rescission." (Italics ours)

The facts in the instant case, as the Circuit Court of Appeals points out (Tr. 669), cannot be fitted into the decision of *Noble* v. *Renner.*

The case of *Loewer* v. *Harris*, 57 Fed. 368, is equally inapplicable, as sufficiently appears from the excerpt from the opinion quoted at pp. 52-3 of petitioner's brief. That was a case of a clear affirmative misrepresentation. The plaintiff was told by defendant that the figures contained in an earlier prospectus of a brewing business showing the profits which the business was making were correct and that the business was showing the same gradual increase that it had previously. Relying on this statement, the plaintiff signed the contract. Later plaintiff discovered that the statement was false and that, instead of increasing, both output and profits had materially diminished during the period covered by defendant's representation.

The Circuit Court of Appeals in that case quotes with apparent approval from the instructions of the trial court to the jury, in which he said (p. 372):

> "'But you must be extremely careful to understand that the defendant was not under any obligation to disclose the unfortunate condition of the business after the interview, *unless he had represented at that time* that the business was doing substantially as well as previously. If you are not satisfied that the defendant

made such a statement at the interview with plaintiff, then you are not to go into the condition of the business subsequently, because the defendant was *under no obligation to volunteer any statement* about its condition at all and, unless he made a statement at the interview, was under no obligation to modify it in any way or to make any further statement about its condition at any subsequent time.' ". (Italics ours)

In short, the decision of that case rested upon the fact that the defendant made a false representation as to the continuing condition of a business—that output and profits were increasing. He was obviously held liable upon the basis of this continuing representation, a factual element which is completely lacking in the instant case. It cannot be contended that respondent either by word or act ever represented to petitioner that the financial condition of The Long-Bell Lumber Company continued the same during 1930 as the condition disclosed by the audited report for the year ending December 31, 1929.

We respectfully submit that neither the Iowa Supreme Court nor any other court of last resort has ever held that, where a seller of securities furnishes to a buyer, at the buyer's request, an accurate financial statement of the issuer of securities and offers to supply any additional information that the buyer may require, the seller becomes liable for fraudulent concealment if he does not thereafter voluntarily advise the buyer of any financial transactions of the issuing company which a court or jury might subsequently think were material. Especially is this so where a seller does not regard such transactions as in any way reflecting adversely upon the financial condition of the issuer or the worth of the securities. To suggest that such is the rule of law is to impose upon the seller a continuing obligation of guaranty far beyond that ever established by the decisions.

IV.

Under Iowa law the rule of *caveat emptor* is applied whenever the parties are dealing at arm's length and there is no evidence of fraudulent concealment. In the instant case there was no evidence of false or equivocal statements made by respondent regarding Long-Bell's financial condition. The Court, therefore, properly applied the Iowa law in holding that respondent was under no duty to voluntarily disclose facts coming to its knowledge.

The statement of petitioner that the rule of *caveat emptor* has no application to business transactions concerning the credit and financial standing of third persons is not supported by the Iowa decisions. *Gamet* v. *Haas,* 165 Ia. 565, 146 N. W. 465, discussed at pages 46-7 of this brief, stated the exact contrary. See also *Wagner* v. *Standard Seed Tester Co.,* 194 Ia. 1330, 191 N. W. 314, at p. 315.

Petitioner, however, does not argue the rule of *caveat emptor,* which only properly applies where the seller has not been guilty of fraudulent concealment. On the contrary, petitioner again *assumes* that the evidence discloses false or misleading statements made by respondent concerning Long-Bell's financial condition and then argues from this premise that respondent was under a duty to voluntarily disclose all additional facts which it knew or later learned bearing upon the Long-Bell situation. The assumption, as we have pointed out and as the Circuit Court of Appeals properly found, is false. Halsey, Stuart & Co. would have been pleased, as the record clearly shows, to have furnished petitioner "anything that you may need" or to answer "any questions" that petitioner had in mind regarding Long-Bell and its financial condition. It fully complied with the only request which petitioner made for financial data.

To sustain its contention that there was any issue of fraudulent concealment to go to a jury, petitioner must support the thesis that, where the seller makes no false representation whatever as to the financial condition of the issuer of securities, where the seller and buyer are admittedly dealing at arm's length, and where the seller offers to supply all information that the buyer requests and does no affirmative act to conceal from the buyer any fact or circumstance regarding the issuer, the seller is still under a legal duty to disclose any information coming to its possession regarding the financial condition of the issuer, whether or not it deems such information material.

The Iowa cases cited under Point III of this brief, to some of which we have already directed the Court's attention, show clearly that no such duty is recognized by the Iowa courts. Nor do the cases cited by petitioner support such a theory. We have already commented on *Foreman* v. *Dugan*, 205 Ia. 929, 218 N. W. 912, and *Noble* v. *Renner*, 177 Ia. 509, 159 N. W. 214 (This brief pp. 57, 59, 63).

The case of *Iasigi* v. *Brown*, 17 Howard, 183, (Pet. brief p. 55), involved the most flagrant kind of an affirmative misrepresentation. The plaintiff requested information respecting the credit of one Thompson and his firm. In response, the defendant wrote two letters, one setting forth detailed reasons intended to lead plaintiff to believe defendant had confidence in the credit of Thompson and his firm, and the other, of later date, affirming the "favorable opinion of the concern" alluded to. As a matter of fact, and as was stated by the defendant, "at the time the letter was written they had lost their confidence" in Thompson. Furthermore, the defendant knew the statements in the letters were false for, in fact, a transfer of all of Thompson's property had been made to the defend-

ant before the first letter was written. The defendant was liable because of affirmative representation known to be false when made. Such a case has no possible relation to the case before this Court, where no fraudulent or misleading statements were made.

In the case of *Thermoid Rubber Co.* v. *Bank of Greenwood,* 1 Fed. (2d) 891, (Pet. brief, p. 57) the plaintiff applied to the defendant bank for information as to the credit standing of the Owen Tire Company. One Self, who had been a large stockholder of the Tire Company and was then Chairman of the Board of defendant bank, had personally taken up a large part of the Tire Company's indebtedness to the Bank and the Tire Company was virtually in liquidation. There was also evidence that Self had conspired with the President of the Tire Company to cause it to stock up heavily on tires in anticipation of impending bankruptcy. In these circumstances and with full knowledge of the facts, the Bank answered plaintiff's inquiry by stating that it had loaned the Tire Company on the Company's own paper; that the loans had proven very satisfactory and had been materially reduced; that it considered the Company in good shape and as having made successful progress and worthy of a line of credit with the plaintiff. The Bank knew that these statements were untrue. As the court said, p. 894: "If it was liable at all, it was liable for stating as true something it knew to be untrue, or about which it knew it was in ignorance".

Petitioner again indulges in the argument that it was respondent's duty to "make a reasonably full disclosure of the true facts" and not to "indulge in half-truths and misleading statements as to the true facts". It neglects to point out to this Court any misleading statements or any half-truths regarding Long-Bell's financial condition spoken by respondent. In short, petitioner, under both points

III and IV of its brief, has argued a case which does not exist on the record. The principles which petitioner contends for are sound when applied to the facts of the cases which petitioner cites. They fail of application in the instant case where no evidence whatever of false or misleading statements regarding Long-Bell's financial condition was presented.

V.

The construction to be placed on an alleged written representation, as well as the materiality of such representation, are questions of law for the Court. The Circuit Court of Appeals was right in the construction which it placed on Wood's letter of May 14, 1930, and the undisputed proof shows that petitioner did not rely on the statement as a representation that there were no outstanding bonds of any other municipal body which were a charge upon lands within the several improvement districts.

The allegation of the amended complaint is that respondent wilfully, maliciously, fraudulently and falsely represented to petitioner "that the City of Longview had no funded debt other than the City of Longview Local Improvement Districts bonds, *which constituted a charge or lien upon the lands and property included within the various Local Improvement Districts of the City of Longview*" (Tr. 11). To sustain this charge, petitioner relies on the sentence contained in Wood's letter of May 14, 1940, reading:

> "You observe, of course, that this city has no funded debt, other than these improvement bonds, and that the original debt has been materially reduced through retirement and maturity" (Tr. 466).

In short, the petitioner seeks to expand Wood's simple statement that the City of Longview "has no funded debt,

other than these improvement bonds" into a declaration that there were outstanding no bonds of *other* political subdivisions which constituted liens upon lands within the improvement districts.

The first answer to this contention is that Wood obviously did not make the statement which petitioner seeks to attribute to him. He referred to only two possible classes of bonds—bonds of the City of Longview and bonds of the Improvement Districts. His comment that Longview had no funded debt was admittedly accurate. His further statement—"other than these improvement bonds"—added but one additional thought to the sentence—that the Improvement Districts bonds were a part of the funded debt of the City of Longview. This was inaccurate. Mr. Hubbell testified, however, that before he bought a single improvement bond he knew that these bonds were not funded debts of the City of Longview but the obligations of approximately twenty separate improvement districts (Tr. 193). The inaccuracy admittedly did not mislead Mr. Hubbell. To read into this simple sentence in Wood's letter a further representation that there were no bonds of any other municipal bodies for the payment of which lands within the limits of Longview might be subjected to a tax, goes beyond all possible limits of reasonable and fair construction.

The second answer to the contention is that neither Wood when he wrote the letter nor Mr. Hubbell when he read it thought that the sentence in question had any reference to the Cowlitz County Diking District bonds or to the bonds of any other separate municipality. The settled practice for years prior to 1930 and for several years thereafter in buying and selling municipal bonds was to make no inquiry as to "overlapping issues", that is, issues of other municipal bodies that might include, in whole or in part, the ter-

ritory of the particular municipality whose bonds were the subject of purchase or sale (Kelly, Tr. 307, Wood, Tr. 332, Hubbell, Tr. 186-7). Mr. Hubbell frankly admits: "It was not my practice up to and including 1930 in making purchases of municipals of any kind to ascertain in advance of the purchase the overlapping municipal districts which were involved. In other words, I made no investigation to determine when buying a waterworks bond in the town of X to discover how many city bonds were outstanding in that town or how many school bonds or county bonds" (Tr. 186-7). Mr. Hubbell could not have had in mind, therefore, that Wood was making a representation that there were no drainage district bonds outstanding which might be a lien on some of the lands in the City of Longview, for the subject of such overlapping issues was not in the minds of either Hubbell or Wood—it was a subject with which neither buyer nor seller concerned himself in 1930.

It is further of significance that Mr. Hubbell at no time claimed that he understood from the last paragraph of Wood's letter that respondent was representing that there were no outstanding bonds of the Cowlitz County Diking District or of any other municipal body, taxes to pay which were liens on lands in the City of Longview. Although Mr. Hubbell was asked what he understood from a reading of certain other exhibits, no similar question was ever propounded as to the Wood letter, Plaintiff's Ex. B-24.

A case very much in point is *Readinger* v. *Rorick*, 92 Fed. (2d) 140 (C. C. A. 6th), heretofore cited in another connection. The suit was based on alleged false representations and concealments of facts in connection with the sale to plaintiff of a large block of bonds of an improvement district located in San Diego County, California. It was claimed, among other things, that the bond circular falsely stated that the "total bonded indebtedness of district" was

$295,000. This was the correct amount of the outstanding bonds of Improvement District No. 38 but, just as in the case at bar, District No. 38 was included within an irrigation district against which there were outstanding over $2,000,000. of bonds, a part of which were naturally chargeable against the lands within District No. 38. The court held that the statement in the circular did not constitute a false representation because it was not intended to refer to the bonds of overlapping municipal districts, it not being customary to take account of such overlapping issues in the purchase and sale of municipal bonds. The court said (p. 144):

> "With reference to the statement 'Total Bonded Indebtedness of District, $295,000.00' this figure is literally true as applied to the district as a unit, but it is not true that this was the maximum bonded debt actually chargeable to lands within the district. This involves overlapping issues.
>
> District No. 38 was included within the La Mesa Lemon Grove and Spring Valley Irrigation District of 18,000 acres against which there were outstanding $2,057,000 of bonds. On a proportional acreage basis this would charge District No. 38 with over $130,000 more of bonded indebtedness. There was a further large overlap in Zone E and A from A. and I. D. No. 25. Thus it seems that the actual bonded indebtedness chargeable to land lying in the district was far in excess of the $295,000 figure appearing in the circular. But Rorick, one of defendants, testified that he had seen scores of circulars and had never seen a reference to overlaps. It does not seem to be customary to make reference to them in such circulars."

The suggestion that respondent was guilty of fraudulently concealing the existence of the Cowlitz County Diking District is equally devoid of merit. These bonds had been issued in 1925 and widely advertised and circularized throughout the United States (Tr. 84, 376). Moreover, the

nnual report of The Long-Bell Lumber Corporation and ubsidiaries, furnished to petitioner before the purchase of ny of the improvement bonds, gave petitioner detailed in-ormation regarding the outstanding Cowlitz County bonds. he amount of such bonds outstanding, the purpose for hich they had been issued, their maturity, and the fact hat they were payable out of assessments made by the iking District against the lands comprised within the dis-ict, the proportion of such assessment, together with Im-rovement Districts assessments, levied against land of the umber Company and subsidiaries as of December 31, 1929, nd the fact that the Diking bonds, like the Improvement istricts bonds, were unconditionally guaranteed as to oth principal and interest, were all fully disclosed by this ocument (Tr. 474-6), which Hubbell admits he read be-ore he purchased a single bond (Tr. 190-1). In addition, Ir. Hubbell admits he knew that the City of Longview was onstructed in the valley at the confluence of the Cowlitz nd Columbia Rivers and that Long-Bell had constructed he dikes, to pay the cost of which the Diking District bonds ere issued (Tr. 191).

In fact, the only detail regarding the Cowlitz County iking District which Hubbell claims he did not learn until fter he purchased the bonds was the exact boundaries of he district. That respondent would furnish petitioner ith all of the information relating to the Diking District utlined above, but fraudulently conceal the open and no-orious fact as to the boundaries of the district, is indeed ncredible. Nor is there the slightest basis for imposing a egal obligation on respondent to volunteer further inform-tion on a subject so collateral to the Improvement Dis-ricts bonds as the Cowlitz Diking District, when Mr. Hub-ell, with all the data in his possession regarding those onds, did not have sufficient interest in the subject to ask

Kelley or anyone else connected with respondent a single question respecting the Diking District or its bonds.

Petitioner complains because the Circuit Court of Appeals found that the representations contained in Wood's letter were not material and presented no issue of fact for submission to a jury. We submit that on the record before this Court no other conclusion is possible. It was the duty of the trial court, as respondent properly requested it to do (No. 4, Tr. 397), to construe the written document relied upon by petitioner and to instruct the jury that petitioner had no right to rely upon the last paragraph of Wood's letter as a representation that lands within the City of Longview were subject to no bond issues other than the Local Improvement Districts bonds.

In *Baker* v. *Mathew*, 137 Ia. 410, 115 N. W. 15, the Supreme Court of Iowa was called upon to consider the refusal of the trial court to give an instruction which would have required the jury to find that the plaintiff had a right to rely and did rely upon the alleged false represenations. The court said at page 19:

> "Moreover, the instruction asked introduced a factor which should not be considered, and that is whether or not the misrepresentations were such as plaintiff had a right to rely upon. By this instruction the matter was left to the jury to determine whether or not plaintiff had a right to rely upon the representations. This is not the law, and the instruction was properly refused for this reason if for no other."

Moreover, as petitioner concedes, the materiality of a representation is a question of law for the Court to decide,*

**Rand* v. *Michaud*, 122 Me. 65, 118 Atl. 893, at 895.
National Bank of Pawnee v. *Hamilton*, 202 Ill. App. 516, at 522-3.
Bower, Actionable Misrepresentation, Art. 31 and Commentary thereon in Sec. 4.
Hembey v. *Cornelius* (Ark.), 31 S. W. (2d) 539, at 540.

as distinguished from the falsity thereof, which is a question for the jury. The Court could not have found something to be material which was never spoken by respondent either in substance or effect, as alleged in petitioner's amended complaint, and which was never relied upon by petitioner as a representation that the lands within the City of Longview were subjected to no bond issues other than the Local Improvement Districts bonds. This wholly fictitious issue as to a representation never made by respondent obviously had no proper place in this case, and the Circuit Court of Appeals was right in finding that the trial court erred in permitting the issue to go to the jury.

VI.

The Circuit Court of Appeals did not decide that petitioner's negligence could be pleaded as a defense to fraudulent representations or affirmative concealment of material facts, nor was its decision based on that principle. The remarks of the Court to which petitioner calls attention were incidental to its discussion of the total failure of the proof to establish fraudulent concealment.

No contention was made by respondent in the court below that petitioner was barred by reason of its own negligence from asserting its claims of false representations and fraudulent concealment. In discussing petitioner's charge that respondent wilfully and intentionally concealed from the petitioner material facts regarding the financial condition of The Long-Bell Lumber Company, respondent properly pointed out that many of these facts were public property, as readily available to petitioner as to respondent, and that these circumstances should be taken into account in considering whether or not the evidence disclosed any affirmative acts of concealment on respondent's part.

It was solely in connection with a discussion of the evidence bearing upon the charge of fraudulent concealment of Long-Bell's financial condition that the Circuit Court of Appeals made the comments in its opinion, excerpts from which are quoted in petitioner's brief (pp. 64-5). The Court referred to the availability of the quarterly financial statements of the Long-Bell Company, published in the leading financial papers and journals, at least three of which were received and read by petitioner, and to the statements contained in the audited report of the Lumber Company for the year ended December 31, 1929, which Hubbell received and read before purchasing any bonds, as indicative of the lack of intention on respondent's part to conceal such facts from petitioner. As the Court, in effect, points out, it is difficult to conceive of Halsey, Stuart & Co. intentionally concealing from one of its best customers facts relating to The Long-Bell Lumber Company which were matters of public knowledge or readily available in the public press.

The remarks of the Court quoted at the top of page 65 of petitioner's brief refer to a claim of fraudulent concealment which petitioner does not allege in its pleadings, which was not submitted to the jury and which is not argued in this Court—that respondent failed to voluntarily disclose to petitioner that when it originally purchased the Improvement Districts bonds in 1925-7 it relied primarily on the guaranty of The Long-Bell Lumber Company and not on the assessed value of the lands in the several districts. The Court of Appeals very properly points out (p. 671) that the literature furnished by respondent to petitioner develops in great detail the circumstances surrounding the founding and development of Longview and certainly evidences no attempt to conceal from petitioner any facts known to respondent regarding the origin or state of development of that city.

It was solely in connection with facts which were readily available to the world or disclosed in data already supplied to petitioner that the court below made the comments complained of—and only to indicate the complete failure of proof of intentional concealment.

The Iowa authorities referred to by petitioner (pp. 66-7) all deal with cases of *affirmative false representations* where the defendant attempted to interpose the defense that if plaintiff had been diligent he would have discovered that the statements were false. Of course, such a contention should not be sustained. The Circuit Court of Appeals does not even intimate, much less decide, that petitioner should not recover for the false representations alleged in its pleading because it could have discovered the facts by reasonable diligence. The court places its decision squarely on the ground that "there is no proof that appellant knew of the falsity of the statements" (Tr. 667) and, as respects the alleged fraudulent concealments, upon the ground that "The only evidence of concealment was that further facts were not voluntarily disclosed. Under these circumstances we think the duty to disclose all its information subsequently did not devolve upon appellant" (Tr. 669).

Petitioner seeks to inject into the decision of the court below a point which was never argued or considered by that court and upon which, as a reading of the whole opinion readily discloses, the court placed no reliance in arriving at its conclusions.

VII.

The judgment of the Circuit Court of Appeals reversing and remanding the cause for a new trial is fully justified not only because the proofs relied upon are insufficient to sustain the action, but also because of the trial court's

errors in the admission of evidence and instructions to the jury and because of the total failure of proof as to the amount, if any, of the petitioner's damages. All of these questions were presented fully to the Circuit Court of Appeals.

The Circuit Court of Appeals, by reason of its finding that petitioner failed to establish the charges of false representations and fraudulent concealments alleged in its complaint, did not find it necessary to pass on the numerous errors in the admissions of evidence and instructions to the jury, and the failure of proof as to the amount of damages, to all of which the attention of that court was directed by the briefs of both parties.* This Court has repeatedly said that a party in whose favor a judgment or decree was rendered below may on appeal urge in support of such judgment or decree any matter appearing in the record, even though such matter was overlooked or ignored by the lower court.** Since, all other questions aside, this cause must, we respectfully submit, be reversed and remanded for the errors referred to above, we feel warranted in presenting these points to this Court in as brief an outline as possible.

A.

Many of the Court's instructions, particularly those on the question of damages, were erroneous and highly prejudicial to respondent.

The Iowa Supreme Court has consistently held that the damages recoverable in an action for deceit are the difference between the actual value of the property at the time of

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*The Circuit Court of Appeals recognizes that all of these questions were before it for decision (Tr. 666).

**U. S. v. *American Ry. Express Co.*, 265 U. S. 425, at p. 435.
Morley Co. v. *Maryland Casualty Co.*, 300 U. S. 185, at p. 191, and cases there cited.

the purchase and the value which it would have had at that time if it had been as represented. We quote from but one of the many Iowa cases announcing this rule.* In *Otte* v. *James,* 200 Ia. 1353, 206 N. W. 613, an action for damages on account of the alleged fraudulent sale of capital stock, the court said (p. 613):

> "We are committed to the rule that the measure of damages for fraud in the sale of property is the difference between the market value of the property as it actually was at the time of the sale and its market value as it would have been if it had been as reprsented. *Stoke* v. *Converse,* 153 Iowa 274, 133 N. W. 709, 38 L. R. A. (N. S.) 465, Ann. Cas. 1913E, 270; *Gray* v. *Sanborn,* 178 Iowa 456, 159 N. W. 1004."

The trial court correctly instructed the jury as to the measure of damages in accordance with the Iowa law and then modified the instruction by appending thereto the statement set forth in the footnote below.**

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*Other cases to the same effect are: *Stoke* v. *Converse,* 153 Ia. 274, 133 N. W. 709, 711; *Kuehl* v. *Parmenter,* 195 Ia. 497, 192 N. W. 429, 431; *Smith* v. *Middle States Utilities Co.,* 224 Ia. 151, 275 N. W. 158, 162.

**"In determining the actual value of said bonds at the time they were acquired by the plaintiff you will take into consideration all of the facts and circumstances as shown by the evidence, including the character of the lands subject to assessment in various local improvement districts, the existence of other liens upon the lands superior to or equal to the lien of said local improvement district assessments, the local conditions then existing at Longview, Washington, so far as shown by the evidence, the true financial condition of The Long-Bell Lumber Company and its subsidiaries and all other facts and circumstances then existing as shown by the evidence.

In determining the fair actual value of said Local Improvement District Bonds at the times plaintiff acquired the bonds, you are entitled to take into consideration subsequent events and developments which were the direct and proximate result of conditions then existing." (Tr. 404)

The first modification was clearly bad in not limiting the jury to a consideration of only those facts and circumstances relating to the value of the bonds at the time they were acquired by the petitioner as was disclosed by the evidence bearing upon the issue of damages. The jury was told that, in determining this value, it could consider "all of the facts and circumstances as shown by the evidence" and "all other facts and circumstances then existing as shown by the evidence", regardless of whether or not that evidence related to the issue of value or to the numerous other issues which were presented by the pleadings and the evidence. The jury was thus invited to speculate as to what the value of the bonds was in 1930 from anything and everything that it heard in the case. This type of instruction has been repeatedly condemned and held to be reversible error.*

The error in the second modification of the instruction was far more damaging and prejudicial than the first. It invited the jury to engage in unlimited speculation as to the value of the bonds in 1930, untrammeled by the evidence. Damages are awarded in an action of deceit to compensate the plaintiff for the loss resulting from the defendant's fraud. The damages to be recovered must always be the natural and proximate result of the acts complained of—the specific misrepresentations alleged and proved. Yet in this case the trial court instructed the jury that it might fix the plaintiff's damages by considering *subsequent events and developments,* which were the direct and proximate result of *conditions* existing in 1930 when the bonds were purchased.

The Court will note that the jury was not limited to a consideration of subsequent events and developments which

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Garvey v. *Chicago Rys. Co.,* 339 Ill. 276, 171 N. E. 271.
Benham v. *Heath,* 77 Ind. App. 91, 133 N. E. 179.
Gallagher v. *Singer Sewing Machine Co.,* 177 Ill. App. 198.

were the direct and proximate result of the claimed misrepresentations, nor was the jury confined to subsequent events and developments or to conditions existing in 1930 *as disclosed by the evidence*. By this sweeping instruction, the jury was left free to draw on its own knowledge of conditions in 1930 and its own interpretation of events and developments which it might think were the direct and proximate result of such conditions.

In 1930 there was in general throughout the country a condition of over-building and over-expansion, excessive inventories, over-production in certain industries, plant extensions beyond the needs of production, and inflation in land values, as a result of which we had a depression of unprecedented severity and duration. This one event and development had more to do with depressing the value of Longview Local Improvement Districts Bonds and the bonds of thousands of other municipalities than any other one development. Yet the jury was given carte blanche to consider even the depression and every other event affecting stock and bond values which resulted from *conditions* existing in 1930.

Almost this identical language was held erroneous by the Supreme Court of Iowa in reversing a tort judgment against the defendants in *Waldman* v. *Sanders Motor Co.*, 214 Ia. 1139, 243 N. W. 555, where the court said (p. 560):

> "Said instruction is also subject to the criticism that the court told the jury that it should take into consideration certain enumerated things and 'any other condition then existing'. The court did not limit this to conditions as shown by the evidence, nor to the allegations of negligence specified in the petition."

In *Smith* v. *Middle States Utilties Co.*, 224 Ia. 151, 275 N. W. 158, which was an action of deceit for damages growing out of the sale to the plaintiff of shares of stock

in defendant company, the court very clearly pointed out (p. 162) that events occurring subsequent to the dates of the purchase of the stock, and specifically that the existence of the depression, were not matters which could properly be submitted to the jury in considering the issue of damages.

There were numerous errors in other instructions which tended to mislead and confuse the jury. We will do no more than call these instructions to the attention of the Court without argument. The second instruction (Tr. 401) states merely abstract principles of law without reference to the facts or pleadings in the instant case. The third instruction (Tr. 401-2) is completely confusing and misleading in that, while attempting to state the essential elements of an action for affirmative fraudulent misrepresentation, it includes an instruction as to liability for failure to disclose, which liability is not recognized by the Iowa courts. The fourth instruction (Tr. 402) purports to instruct the jury with special regard to the testimony of certain witnesses, thus falling within the universal condemnation of the courts. The fifth instruction (Tr. 402-3) is erroneous in that it calls attention to specific evidence and purports to instruct the jury not on a question of law but as to certain facts. The sixth instruction (Tr. 403) is in hopeless and irreconcilable conflict with the eighth instruction (Tr. 403) given by the court, and the seventh instruction (Tr. 403) in effect presents to the jury the issue of negligent misrepresentation, a doctrine not recognized by the Iowa courts.

By reason of the erroneous instructions to the jury, and particularly the unprecedented and prejudicial instruction given on the issue of damages, respondent was deprived of a fair trial in the lower court.

B.

The trial court erred in admitting evidence as to events and happenings long subsequent to 1930, and in no way shown to be the direct or proximate result of the alleged misrepresenations or concealments, for the purpose of establishing the value of Longview Local Improvement Districts Bonds at the time of their purchase in 1930.

It is the law of Iowa, as it is the law generally, that in proving damages in an action for deceit evidence of only such subsequent events and happenings as are the direct and proximate results of the fraud can be submitted to the jury. *Baumchen* v. *Donahoe,* 215 Ia. 512, 242 N. W. 533; see also: *Carlson* v. *Burg,* 137 Minn. 53, 162 N. W. 889.

Moreover, even in those jurisdictions, such as New York, where the courts have sanctioned the admission of evidence as to subsequent events and circumstances as affecting the value of the securities at the time of purchase, the courts have clearly recognized and stated that in no event can such facts be shown *after* the fraud has ceased to operate and to induce the continued holding of the securities; that is, after the discovery of the fraud by the buyer. The simple reason for this limitation is that, after discovery of the fraud, the buyer is under a duty to elect whether to continue to hold the securities or to dispose of them and take his loss. This is clearly pointed out in *O'Hara* v. *Derschug,* 241 App. Div. 513, 272 N. Y. S. 189, at p. 198, where the New York authorities are reviewed. Other cases to the same effect are noted in the footnote.*

**David* v. *Belmont,* 291 Mass. 450, 197 N. E. 83, 85;
Southern Bldg. & Loan Assoc. v. *Wales,* 224 Ala. 40, 138 So. 553, 555;
Southern Bldg. & Loan Assoc. v. *Bryant,* 225 Ala. 527, 144 So. 367, 368;
Danielson v. *Skidmore,* 125 Ark. 572, 189 S. W. 57, 58;
Munson v. *Fishburn,* 183 Cal. 206, 190 Pac. 808;
cf. *Healy* v. *Ginoff* (Mont.), 220 Pac. 539.
Singleton v. *Harriman,* 152 Misc. 323, 272 N. Y. S. 905, 906 (Aff'd 241 App. Div. 857, 271 N. Y. S. 996).
People v. *S. W. Straus & Co.,* 156 Misc. 642, 282 N. Y. S. 972, 980.

In the trial of the instant case, petitioner, over the objection of respondent, was permitted to introduce, for the purpose of establishing damages, a mass of facts and circumstances which not only had no causal connection with the fraud alleged in petitioner's complaint but which related to events occurring long subsequent to the date of the admitted discovery of the alleged fraud, which was the middle of 1931.

We summarize but a part of this incompetent and highly prejudicial evidence.

1. The fact that The Long-Bell Lumber Company made application to the Federal District Court at Kansas City, Missouri, in June, 1934, for reorganization under Section 77B of the Federal Bankruptcy Act (Tr. 134-37).

2. Certified copy of the Plan of Reorganization of The Long-Bell Lumber Company and final decree of the Court entered in the reorganization proceeding in 1935 (Plff's Ex. P-53, Tr. 272).

3. Testimony as to the market value of preferred and capital stock of the reorganized The Long-Bell Lumber Company as of January 4, 1939, and the range of prices for such stock from December 1, 1935, to January 4, 1939, also amount of stock outstanding, par value of shares and dividends in arrears (Tr. 138-41).

4. The institution of a foreclosure action in the Superior Court of Cowlitz County, Washington, by Cowlitz County to foreclose for general taxes on certain lots and parcels of land in the City of Longview and tax deed dated May 10, 1938, covering property sold for general taxes as the result of said foreclosure proceedings and tax roll made up in 1938 purporting to show outstanding Consolidated Diking District as-

sessments against property in the City of Longview (Tr. 264-68, Plff's Exs. P-47, P-49).

5. Large map of Longview showing in red the various parcels sold for general taxes in 1938 (Plff's Ex. P-48, Tr. 246).

6. A list of securities with valuations to be used by Insurance Companies in annual statements as of December 31, 1936, prepared by a committee of the Insurance Commissioners Convention, and testimony as to the value placed by such committee on Longview Local Improvement Districts bonds as of December 31, 1936, and Supplement to 70th Annual Report of the Equitable Life Insurance Company of Iowa for the year 1936, purporting to show the value placed on said bonds by the petitioner in its 1936 report (Plff's Exs. B-50, B-51, Tr. 207-8).

We submit that the admission of such evidence was not only clearly improper and insupportable on any conceivable theory of proving damages in a fraud action but was grossly confusing and misleading to the jury.

C.

There was no evidence before the jury from which it could possibly determine the amount of petitioner's damages, and the trial court erred, therefore, in not directing a verdict for the respondent.

The rule for computing damages in an action for deceit is clearly laid down in the Iowa cases referred to under Point VII A *supra*. The jury was required to find from the evidence two values for the $266,000. principal amount of Longview Improvement Bonds owned by the petitioner at the time of trial—the actual value on the dates of the respective sales in 1930 and the actual value which such

bonds would have had on these same dates if they had been as represented. Their value in 1930 was obviously made up of two elements—the value of the land and buildings subject to assessment to pay the bonds and the value of the Long-Bell guaranty. No evidence whatever was introduced in the record as to the value in 1930 of the lands and buildings in Longview subject to the Improvement Districts assessments. No opinion evidence of experts or others was offered to guide the jury as to what these bonds were actually worth in 1930 or as to what they would have been worth if as represented. No proof was offered as to the value of the Long-Bell guaranty, except the consolidated balance sheet of The Long-Bell Lumber Corporation and subsidiaries as of January 1, 1930, and January 1, 1931. There was no possible way for the jury to have arrived at the difference of $66,750. between the actual value of the principal amount of Longview Improvement Bonds in 1930 and the value of these bonds as represented, except by resorting to guess, conjecture and speculation.

The Iowa courts have laid down the rule, which is after all axiomatic, that in a fraud action the jury cannot be left to conjecture and speculate as to the amount of plaintiff's damages. There must be definite and positive proof as to such amount.

In *Perry Fry Co.* v. *Gould,* 214 Ia. 983, 241 N. W. 666, the defendant by counterclaim asked damages for alleged fraudulent representations as to the condition of a farm which was the subject matter of the suit but offered no proof as to its reasonable market value at the time of the sale nor its value if it had been as represented. The court, after discussing the rule of damages in a deceit action, said (p. 669):

> "There is no evidence in the record as to the fair and reasonable market value of the Wisconsin farm at

the time in question, to wit, February, 1925, nor what it would have been if as represented. For this reason alone, regardless of other matters urged as error relative to the submission of the alleged false and fraudulent representations as to the condition of the farm, the court should not have submitted to the jury the alleged false and fraudulent representations as to the condition of the farm as a basis for setoff against the judgment of the plaintiff. This matter was called to the attention of the court by timely objections and exceptions."

Other cases to the same effect are noted in the footnote.*

The verdict and judgment cannot be reconciled with any facts in this record or tested by any competent proof. The trial court, therefore, clearly erred in not granting respondent's motion for a directed verdict and in denying respondent's motion for a new trial.

CONCLUSION

This case is devoid of substantial merit. Not only was there a complete failure of proof to sustain the charges of false representations and fraudulent concealments alleged in the amended complaint, but the situation of the parties themselves, as well as the conduct of the petitioner after admitted discovery of the alleged frauds, negatives the idea of any intentional wrongdoing on the part of respondent. Petitioner was one of respondent's large and valued customers. It is inconceivable that respondent would make false representations or would fraudulently conceal from this customer facts regarding these bonds, which respondent was itself buying on the open market and

*_Doyle_ v. _Union Bank & Trust Co._, 102 Mont. 563, 59 Pac. (2d) 1171, 1174.
Otte v. _James_, 200 Ia. 1353, 206 N. W. 613.
Harris v. _Shear_, (Tex.), 177 S. W. 136, at 137.
Kinnear v. _Prows_, 81 Utah 135, 16 Pac. (2d) 1094.

selling to the petitioner at a profit of a point or less over its actual cost.

It does not accord with human experience that one who has been defrauded in connection with the sale of a large amount of securities would make no complaint to the seller after discovering fraud. Yet petitioner, after it had admittedly discovered all of the facts in the Summer of 1931, never claimed that respondent had defrauded it. It continued to buy securities from respondent in large amounts, an aggregate of over $2,000,000, until well into 1934. It participated on a most friendly basis with respondent's Vice-President in endeavoring to work out a reorganization of The Long-Bell Lumber Company as it applied to the Improvement Districts bonds, and never once during those extensive negotiations was a charge of fraud ever made. It was not until after The Long-Bell Lumber Company filed its petition for reorganization under Section 77B in June of 1934 that, for the first time, petitioner gave voice to the charge that it had been defrauded, and even then its charges were limited to the alleged misrepresentations in the circular and Wood's letter, and no mention was made of fraudulent concealments. We respectfully submit that a reading of this whole record demonstrates that this is but another of those cases growing out of the depression, where the buyer of securities, when he is ultimately faced with taking a loss, seeks to cast that loss upon the seller by resorting to charges of fraud in the sale.

For the reasons indicated, we believe that the judgment of the Circuit Court of Appeals was right and that that court reached the only conclusion which the facts of this case justify.

Respectfully submitted,

EDWARD R. JOHNSTON,
FLOYD E. THOMPSON,
Attorneys for Respondent.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 291

EQUITABLE LIFE INSURANCE COMPANY OF IOWA,

Petitioner,

vs.

HALSEY, STUART & CO., A CORPORATION,

Respondent.

PETITION OF HALSEY, STUART & CO., RESPONDENT, FOR REHEARING.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Halsey, Stuart & Co., respondent in the above entitled case, by Edward R. Johnston and Floyd E. Thompson, its counsel, respectfully petitions this Court for a rehearing of said cause and as grounds for said petition shows:

I.

This Court, in reversing the Circuit Court of Appeals, has misconceived the grounds for that Court's decision as disclosed by its opinion. By so doing, this Court has, we believe, greatly confused the law applicable to the sale of securities.

(1) The statement in this Court's opinion (p. 1) that "the Circuit Court of Appeals for the Seventh Circuit reversed on the ground that some of the untrue statements

on the faith of which petitioner had purchased the bonds were within the protection of the 'hedge clause' " fails to give consideration to the underlying basis of that Court's decision. The Court of Appeals found (R. 667) that "there is no proof that appellant knew of the falsity of the statements. Although appellee sought to show that several of appellant's agents must have known of their falsity since they had visited Longview, *there was no actual proof of such knowledge,** and neither the jury nor this Court would be justified in inferring it from the facts presented. *Therefore,* the hedge clause constituted a valid defense to the charge of misrepresentation as to the location of the plants and the river frontage." The Circuit Court of Appeals rested its decision, we submit, upon the lack of proof as to an essential element of the fraud, namely, knowledge by respondent of the falsity of the statements contained in the circular. The *ratio decidendi* of the Court's decision is found in the concluding paragraph of its opinion—"* * * the proofs here relied upon are insufficient to sustain the action, and the case should not have been submitted to the jury" (R. 673). That Court's decision would have been the same had there been no hedge clause, since without knowledge there was no actionable fraud.

(2) The statement in this Court's opinion (p. 1) that "*another* untrue statement contained in a letter written by respondent's agent to petitioner" ignores the vitally important and undisputed fact that the *only* untrue statement contained in this letter, to-wit: that the bonds were *funded obligations* of the City of Longview, admittedly did not mislead the petitioner, whose Vice-President testified that he at all times knew that the bonds were not funded obligations of the City (R. 193). As the Circuit Court of Appeals properly pointed out (R. 666), the statement as to the location of the industrial plants and the frontage on

* All italics herein are supplied unless otherwise noted.

the Columbia River "constitute the only actual misstatements in the record".

(3) The statement in this Court's opinion (p. 1) that the Circuit Court of Appeals held that there was no breach of legal duty on the part of respondent in failing to reveal to petitioner facts known to respondent indicating that a financial statement of the guarantor "did not truly represent the financial condition of the guarantor" is not an accurate statement of the basis of the Circuit Court of Appeals decision. It was undisputed that the financial statement for the year ended December 31, 1929 was accurate (R. 668). What the Circuit Court of Appeals held was that "the only evidence of concealment was that *further* facts were not voluntarily disclosed. Under these circumstances, we think the duty to disclose all its information *subsequently* did not devolve upon appellant" (R. 669).

At most, the Circuit Court of Appeals held that a "hedge clause" was a protection where the representations of the seller were innocently made. By its reversal of that decision this Court has, we submit, left in confusion the effect of such a clause on the seller's liability, where, as here, the seller was without knowledge that the statements in the circular were in any respect inaccurate.

II.

This Court's statement of the facts is in some respects contrary to the undisputed proof and without support in the record and, in other respects, because of omissions, is misleading.

(1) The statement in this Court's opinion (p. 3) that the map on the back of Exhibit B-25 bore a legend reciting that it "is intended to show in a general way the relation of the various parts of the City in relation to water, rail-

road and highway transportation facilities'' is misleading, since the legend read ''a general layout of the *entire Longview development,* including the manufacturing plants of The Long-Bell Lumber Company'', thus clearly indicating that the map covered much more than the City of Longview. As Mr. Andrews testified, ''Longview was dealt with by the Longview people as being the development there and extended all down the river front'' (R. 356-7).

(2) The failure of this Court's opinion to include in the excerpt from Mr. Wood's letter of May 15, 1930 (p. 3) the vitally important clause ''but if you have any questions in mind we shall be pleased indeed to have you call Mr. Kelley or this office for anything you may need'' (R. 466) renders, we submit, the quotation misleading. The omitted language clearly negatives any possible charge of fraudulent concealment on respondent's part.

(3) The statement in this Court's opinion (p. 4) that in *some* of petitioner's offerings of Long-Bell Lumber Company issues Halsey, Stuart & Co. was described as the ''fiscal agent'' is not correct. Petitioner was referred to in connection with only *one* issue of bonds as ''fiscal agent'' and that was in the letter of Mr. Long describing the Convertible 6% Gold Notes of The Long-Bell Lumber Company aggregating $3,250,000 secured by the Longview, Portland and Northern Railway (R. 425). By fiscal agent all that was meant is that on one issue of bonds the interest coupons were payable at respondent's office (R. 86).

(4) The statement quoted by the Court from Exhibit B-6 (R. 433), which was an outline of a general plan for the merger of the large lumber producing companies in the Pacific Northwest, was not a statement ''by Long-Bell's officials to respondent'' but was merely an outline prepared for submission to those companies that might be interested in the merger, and the language ''to meet quickly an acute and distressing situation'' had no reference what

ever to The Long-Bell Lumber Company's financial condition but referred to the general condition of the lumber business in the Pacific Northwest (R. 99).

(5) The statement in this Court's opinion (p. 5) that there were "unsuccessful efforts to procure loans and to convert Long-Bell property into cash" is not accurate. All the properties offered for sale were sold on most favorable terms (R. 353-4). There were but two unsuccessful efforts to sell securities—the notes secured by the Lamm and Kesterson contracts and the small bond issue on the Long-Bell Daily News, both being issues of a type not marketable in 1930 (R. 100).

(6) The statement in this Court's opinion (pp. 5-6) that there was evidence from which the jury could have found that respondent had been advised by the Long-Bell Company that the officers of the Chase National Bank had withdrawn and refused to renew the Long-Bell Company's line of credit is contrary to the record. The evidence shows that upon the return of the Long-Bell officials from New York in May all of Long-Bell's lines of credit had been confirmed, a total of $8,600,000, with the single exception of a $500,000 line at a St. Louis bank (Ex. W-13, R. 533). Although not of material importance, the further statement in the same paragraph of the Court's opinion (p. 6) that the Sales Company plan was carried into effect in October, 1930 is inaccurate. It was made effective as of November 1, 1930 but the transfers did not actually take place until December of that year (R. 351).

(7) This Court was, we submit, in error (p. 7) in stating that the Circuit Court of Appeals overlooked the fact that the documentary evidence furnished to petitioner after the receipt of the circular "contained items of information not found in the circular". The only documentary evidence to which the Circuit Court of Appeals made reference contained statements as to the location of

the industrial plants and frontage on the river substantially the same as those made in the circular (Exs. B-25 to B-31). The Circuit Court of Appeals was, of course, not referring to the financial statement of The Long-Bell Lumber Company, which was admittedly correct; it referred to the only documents which petitioner ever claimed contained incorrect statements, namely, those referring to the location of the plants and the frontage on the river. The statement that the City of Longview had no funded debt was utterly immaterial, since, as we have pointed out, Mr. Hubbell admitted that he knew that the improvement bonds were not funded obligations of the city before he bought a single bond (R. 193). The respondent never, either in the trial court or in the Circuit Court of Appeals, claimed that the hedge clause would relieve respondent from any statements falsely or recklessly made. Its sole contention was that it made no statements which it knew or had any reason to believe were false.

(8) This Court's statement (p. 8) that the jury could have found that the statements having persuasive influence in promoting the sale of the improvement bonds were, among others, "the statement that the city had no funded indebtedness other than the improvement bonds and the representations as to the strong financial position of The Long-Bell Lumber Company" is incorrect. Petitioner not only knew that the improvement bonds were not funded obligations of the city before purchasing any bonds but did not rely upon the fact that there were no bonds of other municipal bodies which were liens upon lands within the said districts (R. 186-7). With respect to the financial statement, there were no representations made other than the financial statement itself, which was admittedly accurate. Moreover, as the Circuit Court of Appeals points out (R. 668), Mr. Hubbell did not deny the positive testimony of respondent's witness that he specifically asked for the "annual report covering Long-Bell Lumber Com-

pany's operation for the year ended 1929'' and for no other financial data.

(9) The statement in the Court's opinion (p. 9) that ''whether counsel had any personal knowledge of the matters stated in the circular or what he stated to respondent with respect to it does not appear'' is inaccurate. The undisputed proof is that Mr. Jesse Andrews, general counsel for The Long-Bell Lumber Company, was also very active in the *business* affairs of Long-Bell and became very familiar with all of the ramifications of that company (R. 346) and from 1923 to 1930 was in Longview, Washington *almost every other month* in connection with the company's business (R. 362). He was devoting in 1930 a major portion of his time to Long-Bell's affairs and together with the President and Chairman of the Board ''conferred more about financial matters than did any other members of the organization'' (R. 347). He examined the circular and approved it ''as being proper and accurate'' (R. 356). It is difficult to conceive of any officer of the company who was better qualified than Mr. Andrews to know the facts and to pass upon the correctness of the circular. The further statement in this paragraph that the description of Longview in the circular was compiled by the witness from advertising copy suggested by the advertising manager of The Long-Bell Lumber Company is also not accurate. Mr. Kendall, who was in charge of all Long-Bell's advertising and had been at Longview prior to the preparation of this circular, dictated and submitted the statement in typewritten form to Mr. Dempsey, Vice-President of Long-Bell, who then forwarded to respondent the matter set forth in the circular descriptive of Longview (Deft.'s Exs. 33, 33-A, R. 615). Mr. Dempsey was active in connection with the executive, administrative and corporate affairs of Long-Bell and had visited Longview at least three times prior to 1930 (R. 110-11).

(10) The statement in this Court's opinion (p. 9) that "no testimony was forthcoming to show that any executive officer of The Long-Bell Lumber Company gave assurances of the truth or accuracy of this information or that any of them believed it to be true" is not, we submit, in accordance with the record. The fact that the statements with respect to Longview were prepared by Long-Bell's advertising manager (Deft.'s Ex. 33-A, R. 615), were passed upon by Mr. Andrews, who devoted a major portion of his time to Long-Bell's affairs (R. 356), were transmitted to respondent by a letter from Long-Bell's Vice-President, R. T. Demsey the principal financial and accounting officer of the company (R. 110, Deft.'s Ex. 33, R. 615), and that every one of the three preliminary circulars on these issues, as well as the final circulars, were submitted to Long-Bell officials for their approval and approved by them (R. 339), is certainly assurance by the officers of Long-Bell to respondent of the truth and accuracy of the statements contained in the circulars.

To say, as this Court in effect does, that the respondent should have relied only upon a personal investigation of the facts at Longview is to place on the seller of securities a greater burden than has ever heretofore been imposed. Even Mr. Hubbell recognized that respondent would naturally and normally obtain its information regarding Longview from The Long-Bell Lumber Company (R. 188).

(11) In stating that two of respondent's Vice-Presidents visited Longview in 1922 and 1924 (p. 9), it should have been pointed out by the Court that there was no city in 1922 (R. 153) and 1924 was a year prior to the original purchase of the first issue of improvement bonds (R. 153, 167), so that no question could have arisen at that time as to the boundaries of the City of Longview or the location of the Long-Bell plants. Neither of these Vice-Presidents had anything to do with the purchase or sale of the improvement district bonds or the preparation of the

circulars (R. 167) and was naturally not interrogated about his knowledge as to the city limits of Longview. This Court, we submit, by its holding is substituting the failure of respondent's Vice-Presidents to testify for affirmative proof of the essential fact of knowledge of the inaccuracy in the statements contained in the circular.

(12) The statement of this Court (p. 9) as to the identified source of respondent's information as to the location of the city on the river and the location of the manufacturing plants is inaccurate. Mr. Simond testified that he had before him Plaintiff's Exhibits B-25 to B-29 (R. 338). Each of these documents, put out by the Longview Chamber of Commerce or The Long-Bell Lumber Company, contained substantially the same statements with respect to Longview that are set forth in the circular. Moreover, as we have pointed out, the accuracy of the description of Longview in the circular was approved not only by the advertising manager of The Long-Bell Lumber Company and its general counsel, Mr. Andrews, but also by Mr. Demsey, one of Long-Bell's Vice-Presidents, who forwarded the advertising manager's statement to Mr. Simond for incorporation in the circular (R. 615). To say, as this Court does at page 10, that the information was not verified by any responsible official of Long-Bell or that the statement rests upon "flimsy support" is, we respectfully submit, to disregard the undisputed evidence. Certainly, approval by three officials of the company, two of whom, at least—Mr. Andrews and Mr. Demsey—were familiar with every detail of the company's affairs, cannot be characterized as "flimsy support". It is only by so disregarding this evidence that any possible issue as to the statements being recklessly made can be injected into the case.

(13) In stating that the trial court was right in leaving to the jury the question of whether the statement in Mr. Wood's letter that the city was without funded debt other

than the improvement bonds materially influenced the petitioner's purchase of the bonds (p. 10), this Court again ignores the admitted fact that the only inaccuracy in this statement, namely, that the improvement district bonds were funded debt of the City of Longview, was known to Mr. Hubbell to be inaccurate at the time it was made and admittedly did not influence his purchase of the bonds (R. 193, 186-7).

III.

This Court has rested its decision in part upon supposed findings of the jury upon issues which were not in fact submitted to the jury and which were not in issue under the pleadings.

(1) The statement in this Court's opinion (p. 6) that petitioners' case as submitted to the jury was that untrue statements had been "knowingly or recklessly made by respondent's officers and agents" ignores the fact that in its pleadings the plaintiff relied solely on intentional fraud. Every charge in the complaint as to alleged misrepresentations is that respondent knowingly misrepresented. There is no charge of negligent or reckless misrepresentation (R. 27-36).

(2) If it can be said, as stated in this Court's opinion (p. 6), that the issue "that the improvement bonds were the only bonds constituting a charge or lien upon the lands in the improvement districts of the city" was submitted to the jury, it should be pointed out that this issue was improperly so submitted, as contended by respondent on the trial, since Mr. Hubbell admitted that he did not rely in purchasing the bonds upon the existence or non-existence of any overlapping municipal issues (R. 186-7). Moreover, he at no time claimed that he understood from Mr. Wood's letter that there were no outstanding bonds of the Cowlitz

County Diking District which were liens upon lands within the improvement districts.

(3) The statement (pp. 6-7) that the issue as to the financial condition of The Long-Bell Lumber Company was submitted to the jury as a false representation is erroneous. That issue, both by the pleadings and the instructions, was submitted to the jury as a wilful and fraudulent concealment of material facts (R. 27-36, 402).

(4) The statement (p. 7) that the Circuit Court of Appeals "failed to consider the question of whether, under the Iowa law, the hedge clause afforded to respondent protection from untrue statements recklessly made" disregards the fact that no such issue was presented by the petitioner's pleadings (R. 27-36). Even less was the Circuit Court of Appeals called upon to consider whether the hedge clause (p. 8) contained untrue statements. The petitioner's pleadings made no charge whatever with respect to the hedge clause and no such issue was ever submitted to or considered by the jury.

(5) The statement of this Court (p. 8) that the issues of recklessness were properly submitted to the jury disregards the fact (a) that no such issue was presented by petitioner's pleadings, and (b) the total absence of evidence of recklessness, since petitioner obtained its information from the most competent source in the world—the officials of the company that founded and built the city. Moreover, Mr. Hubbell admits he "knew it was the practice, and of necessity so, of investment houses in securing information regarding the properties of a company upon which the securities were being issued to *secure that information from the issuing company*" (R. 188). The three Iowa cases cited—*Hanson* v. *Kline*, 136 Ia. 101; *Davis* v. *Central Land Co.*, 162 Ia. 269, and *Haigh* v. *White Way Laundry Co.*, 164 Ia. 143—were all cases where the defend-

ants asserted *as of their own knowledge* facts as to which they had no information and as to which *they had made no investigation.*

(6) The statement in this Court's opinion (p. 10) that the jury could have found that the hedge clause itself was untrue and would mislead prospective purchasers ignores the fact that no issue as to the truth or falsity of the hedge clause was presented by the petitioner's pleadings nor was such issue ever presented to the jury by instructions or otherwise. Certainly, an issue not raised either by the pleadings or in the trial court cannot be relied upon here. Furthermore, there could be no showing that respondent did not rely in its purchase of the bonds upon information contained in the circular, since admittedly respondent relied upon the financial statement, the guaranty, the tax exempt feature, and other pertinent statements contained therein.

(7) If in the paragraph on page 11 of its opinion beginning "while it is arguable, as the court below thought, etc." this Court is suggesting that petitioner had a right in this case to contend that respondent should have voluntarily disclosed the fact that, in its original purchase of the improvement bonds, it relied primarily on the Long-Bell guaranty, then we respectfully suggest that no such charge of alleged fraudulent concealment was made in petitioner's pleadings nor was such issue of alleged concealment ever submitted to or passed upon by the jury.

IV.

This Court in its opinion has announced a rule of law in Iowa which is, we believe, not supported by the Iowa decisions but is contrary thereto.

(1) The statement (p. 10) that the trial court rightly left to the jury the question of whether respondent, through its Vice-Presidents or others, became aware of the actual location of the properties in question in effect holds that a charge of false and fraudulent misrepresentations may be established by mere inference without any affirmative proof as to knowledge of the alleged falsity on the part of respondent. This, we respectfully submit, is not the law. (See authorities cited under Point II, Respondent's Brief.)

(2) The statement of this Court (pp. 11-12) that petitioner in this case could rely upon the doctrine that a statement of a half-truth is as much a representation as if the facts stated were untrue, ignores, we respectfully submit:

(a) The fact that no half-truth was spoken in this case. Respondent did not by word or act represent that the annual report and balance sheet of The Long-Bell Lumber Company was anything other than what it purported to be—a statement of Long-Bell's financial condition for the year ended December, 1929;

(b) The fact that, as the Circuit Court of Appeals pointed out (R. 668), Kelley testified that Hubbell asked specifically for the "annual report covering Long-Bell Lumber Company's operations for the year ended 1929", and, although Hubbell followed Kelley on the stand and denied certain of his statements, he did not deny this testimony;

(c) That this record shows that all respondent failed to do was to volunteer information regarding

Long-Bell's financial condition, which respondent's officers did not believe affected adversely Long-Bell's financial position and which did not cause respondent to cease the purchase for its own account of Long-Bell securities (R. 100); and

(d) That none of the Iowa authorities referred to by the Court involved a case in any respect similar to the case at bar since in each of the Iowa cases cited it clearly appeared that there were *affirmative acts of misrepresentation* or *affirmative acts of concealment* and not merely, as in the instant case, a failure to disclose facts coming to respondent's knowledge. No Iowa case is cited, and we have found none, which imposes an obligation upon a seller for fraudulent concealment unless affirmative acts of concealment or affirmative misrepresentation are clearly established. (See authorities cited Point III, Respondent's Brief.) The record in this case is destitute of evidence as to any affirmative misrepresentation or affirmative act of concealment touching Long-Bell's financial condition.

It is submitted that the rule enunciated in the latter portion of the opinion extends the doctrine of fraudulent concealment far beyond that laid down by the Iowa courts. This Court, in effect, has said that in 1930 the duty rested on a seller of securities to voluntarily disclose everything he knew or learned about the issuer of securities, regardless of whether the seller deemed such information material or pertinent.

We earnestly submit that, to brand as fraudulent the sales of securities in this case, resort must be had to conjecture and inference or to a duty to disclose imposed upon the seller which goes far beyond that laid down by any of the Iowa authorities.

We respectfully request that this Court grant respondent's prayer for a rehearing.

Respectfully submitted,

EDWARD R. JOHNSTON,
FLOYD E. THOMPSON,
Attorneys for Respondent.

Edward R. Johnston, one of the counsel for respondent, hereby certifies that the foregoing petition for rehearing is presented in good faith and not for the purpose of delay.

Chicago, Illinois, March 25, 1941.

Edward R. Johnston

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SUPREME COURT OF THE UNITED STATES.

No. 291.—October Term, 1940.

Equitable Life Insurance Company of Iowa, Petitioner, *vs.* Halsey, Stuart & Co.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[March 3, 1941.]

Mr. Justice Stone delivered the opinion of the Court.

Petitioner brought this suit in the District Court for Northern Illinois to recover damages suffered by reason of alleged fraudulent statements made by respondent's agents which induced petitioner to purchase of respondent a large number of Longview (Washington) local improvement bonds. The trial to a jury resulted in a verdict and judgment for petitioner in the sum of $66,150. The Court of Appeals for the Seventh Circuit reversed on the ground that some of the untrue statements, on the faith of which petitioner had purchased the bonds, were within the protection of the "hedge clause" which appeared in a circular by which respondent had offered the bonds for sale to petitioner. The clause read:

"All statements herein are official, or are based on information which we regard as reliable, and while we do not guarantee them, we ourselves have relied upon them in the purchase of this security."

The court found that another untrue statement contained in a letter written by respondent's agent to petitioner was "carelessly made", but, taken alone, was too trivial in its effect in inducing petitioner to purchase the bonds, to support the verdict. It also held that there was no breach of legal duty on the part of respondent or its officers in their failure to reveal to petitioner facts known to respondent indicating that a financial statement of a guarantor of the bonds, submitted to petitioner by respondent's agent, on the faith of which petitioner had bought the bonds, did not truly represent the financial condition of the guarantor. We granted certiorari October 14, 1940, upon a petition which asserted the failure of the

court below to follow state law in its rulings, the questions presented being of public importance because they involve the relation of the federal courts to the states.

We summarize briefly the evidence submitted to the jury which bears on the contentions made before us. Respondent is a large dealer in bonds and securities, with an office in Chicago. Petitioner is an Iowa corporation having its office and principal place of business in Iowa where the transactions resulting in the sale of the bonds in question took place. In May, 1930, respondent through an agent offered to sell petitioner a quantity of the bonds of the Longview local improvement districts. The offering was by printed circular issued by respondent on April 7, 1927, which described the bonds as payable from proceeds of special assessments to be levied upon the benefited properties and stated that their payment was guaranteed principal and interest by Long-Bell Lumber Company, whose balance sheet for the year ending December 31, 1926, was printed in the circular. The circular stated

"Longview is situated about 133 miles south of Seattle, at the confluence of the Columbia and Cowlitz Rivers. It has a frontage of 7¼ miles on the former, and is a port of call for ocean-going vessels midway between Portland and the Pacific Ocean. . . . Because of its natural advantages and proximity to the timber stands of the Long-Bell and Weyerhaeuser interests, Longview was selected as the site for the vast lumber manufacturing plants of these companies. The present output of the Long-Bell plants is 1,800,000 board feet per day. The Weyerhaeuser plants are under construction. Manufacturing plants have also been erected by other concerns, including the Longview Concrete Pipe Company, the Pacific Straw Paper & Board Company, the Magor Car Corporation, the Standard Oil Company, Longview Paint & Varnish Company, and the Central Mill Works. The first unit of the plants of the Longview Fibre Company, to cost 2½ million dollars, is now well under way.

The circular contained the "hedge clause" which has already been quoted.

In making the offering, respondent's agent also informed a vice president of petitioner that the bonds were secured by assessments on properties in the City of Longview and as additional security carried the full and complete guarantee of the Long-Bell Lumber Company which was a very large, long established company doing business in the south and west, and that local improvement districts

Nos. 11 and 19, against which most of the bonds were issued, were practically co-extensive with the limits of the city.

After reading the circular petitioner's vice president requested of respondent's agent additional information about Longview and the property there and about the Long-Bell Lumber Company, which he supplied in a number of documents. One was a booklet issued by the Longview Company, a subsidiary of Long-Bell Lumber Company, engaged in selling Longview real estate. The booklet showed a map on which the mills of Longview Lumber Company, the property of the Weyerhaeuser Timber Company and the City of Longview appeared to extend to and along the northerly side of the Columbia River. The map bore a legend reciting that it "is intended to show in a general way the relation of the various parts of the city in relation to water, railroad and highway transportation facilities". Another document was advance proof of an advertisement of the Longview Company, published in the Saturday Evening Post. It contained an illustration of extensive manufacturing plants, beneath which it was stated "The thoroughly modern electrically operated manufacturing plants shown in the above sketch are in Longview, Wn. They produce 1,800,000 feet of Douglas lumber a day. The buildings cover 72 acres. Six ocean-going freighters can load at one time at the Long-Bell docks". Another document was a booklet issued by the Longview Chamber of Commerce containing statements from which it could reasonably be inferred that the manufacturing plants of the Long-Bell Lumber Company and the Weyerhaeuser Timber Company were within the City of Longview and that the latter was on the Longview waterfront along the Columbia River.

Still another document, which will presently be discussed, was the published balance sheet for the year ending December 31, 1929, of the Long-Bell Lumber Company. Respondent's sales manager, on May 15, 1930, also wrote to petitioner's vice president a letter offering the first $100,000 of bonds purchased by petitioner saying, "We believe you have before you practically all the data covering this issue of bonds" and, "you observe, of course, that this city has no funded debt other than these improvement bonds and that the original debt has been materially reduced through retirement and maturity."

It is not seriously contended here that petitioner did not purchase the bonds on the faith of the statements which we have detailed and

others of similar character, nor is it denied that the Long-Bell, Weyerhaeuser, Longview Fibre and Standard Oil Company plants were all outside the city limits of Longview and that none of those properties were subject to assessments in any of the improvement districts. The mill properties were located between the Columbia River and the limits of the City of Longview. The city never had a frontage of 7¼ miles upon the Columbia River and no such frontage at all except for a distance of about 200 yards adjacent to the Longview dock and not within the improvement districts. Substantially all of the land included within the local improvement districts of Longview was also included within a diking district known as Cowlitz County Consolidated Diking District No. 1, which in May, 1930, when the negotiations for the sale of the bonds to petitioner took place, had outstanding bonds in the sum of $2,554,000 payable from the proceeds of special assessments to be levied upon substantially all lands within the improvement districts. Respondent had purchased the entire issue of diking bonds from the Long-Bell Lumber Company in 1925 and later resold them to the public.

At the trial a vice president of respondent, called by petitioner as an adverse witness, testified that in purchasing the local improvement district bonds respondent gave no consideration to the special assessments against Longview real estate; that respondent regarded Long-Bell Lumber Company's guarantee as the sole justification for handling the bonds and would not have handled them without the guarantee. None of these facts detailed by the witness were communicated to petitioner in advance of the sale of the bonds.

A close business relationship had existed between respondent and Long-Bell Lumber Company for some years before 1930. It had purchased from the Lumber Company and sold to customers $25,000,000 of its first mortgage bonds between 1922 and 1926, and in some of its offerings it had been referred to as the "fiscal agent" of the Long-Bell Lumber Company. In 1926 it had purchased from the Lumber Company and resold $3,250,000 of its bonds. In the years 1925, 1926 and 1927 it purchased from the Lumber Company and later resold more than $3,000,000 of the Longview local improvement district bonds.

The Long-Bell Lumber Company balance-sheet for 1929, to which we have referred, disclosed total assets of more than $116,000,000 with current assets of cash and inventories amounting to more than $15,000,000. Current liabilities were less than $8,000,000 including bank loans of $4,000,000. The funded debt of Long-Bell and all subsidiaries was less than $42,000,000, and capital and surplus were shown in excess of $59,000,000.

There was much evidence from which the jury could have found that the Lumber Company, prior to the first sale of the bonds to petitioner in May, 1930, had, by more or less regular reports, kept respondent closely advised of developments at Longview and generally of its financial condition. Among the data transmitted were documents produced from respondent's files showing that in 1927 sales of Longview real estate by the Lumber Company's real estate subsidiary had practically ceased; that during 1928 properties already sold were being taken back on the forfeiture of installment sales contracts, and that in April and May of that year forfeitures and repurchases in number and valuation of properties equalled new sales; that in 1928 respondent conducted market operations in the securities of the Lumber Company and asked $75,000 as compensation for bringing about an improvement in their market quotations.

During the early months of 1930 and before the first sale of bonds to petitioner, which occurred on May 17th, there were frequent communications of information from the Long-Bell Lumber Company to respondent from which the jury could have found that respondent was advised of the progressive financial deterioration and loss of credit of the Long-Bell Lumber Company. These included discussion of an attempt to consolidate the Long-Bell Company with other lumber producers in the effort, as stated by Long-Bell's officers to respondent, "to meet quickly an acute and distressing situation"; ~~unsuccessful~~ efforts to procure loans and to convert Long-Bell property into cash; "to strengthen the Lumber Company's current financial condition by converting physical assets into working capital to meet current requirements"; unsuccessful efforts in March and April to market secured bonds and note issues of the Long-Bell Lumber Company; unsuccessful efforts by respondent in May to secure financing for Long-Bell by New York banking houses. There was evidence from which the jury could have

found that respondent had been advised by the Long-Bell Company, that the officers of the Chase National Bank of New York and a large St. Louis bank had withdrawn and refused to renew the Long-Bell Company's line of bank credit and that the Chase Bank had advised strengthening of the Lumber Company's current financial position, and had suggested the formation for credit purposes of a subsidiary corporation to which the Long-Bell could transfer its liquid assets for purposes of borrowing operations. This advice was carried into effect in October, 1930. None of these circumstances showing the changed financial condition of the Long-Bell Lumber Company after its December 31, 1929 statement or any of the information of respondent with respect to them were revealed by respondent or known to petitioner before purchasing the improvement bonds.

Petitioner purchased from respondent $353,000 of the bonds, $100,000 on May 17, 1930, $26,000 in September, $211,000 in October, $13,000 in January, 1931 and $3,000 in February. Of these $279,000 were bonds of districts 11 and 19 which were the two districts which embraced substantially the whole city of Longview. In 1934 the Long-Bell Lumber Company filed a petition for reorganization under § 77(B) of the Bankruptcy Act. By the decree in the reorganization proceeding the Lumber Company was relieved of its guarantee of the improvement district bonds, the petitioner receiving 8 and 4/10ths shares of common stock in the reorganized corporation in lieu of the guarantee on each $1,000 bond.

Petitioner's case as submitted to the jury was in substance that it had been induced to purchase the bonds by untrue statements knowingly or recklessly made by respondent's officers and agents as follows: (1) That the extensive mill properties of the Long-Bell Lumber Company, the Weyerhaeuser Timber Company, the Longview Fibre Company and others were located in Longview and subject to assessment in Local Improvement Districts Nos. 11 or 19, the limits of which were substantially co-extensive with the limits of the city; (2) that Longview had a frontage of 7¼ miles upon the Columbia River which, if true, would locate the mill properties within the corporate limits; (3) that the improvement bonds were the only bonds constituting a charge or lien upon the lands in the improvement districts of the city, and, finally, (4) that respondent's officers and agents had in May, 1930, made representa-

tions of the strong financial position shown in the 1929 balance sheet of the Long-Bell Lumber Company which had guaranteed the improvement bonds, without disclosing to petitioner the knowledge which it then had or later acquired before the sale of the bonds, that the Long-Bell Company was in fact in a declining and precarious financial condition.

The Court of Appeals held that the various statements and information given by respondent's officers and agents, after respondent's offering circular had been submitted to petitioner, were substantially the same as those made in the circular itself and therefore were under the protection of the hedge clause which had been printed in the circular. Stipulations by which one attempts to avoid the consequences of false statements fraudulently or recklessly made are strictly construed in the Iowa courts. *Jordan* v. *Nelson*, 178 N. W. 544. We are cited to no Iowa authority to the effect that such a clause applies or affords protection to any except the statements to which it refers. But we assume for present purposes, without deciding, as the Court of Appeals held, that the hedge clause extended its protection to later statements made by respondent like those contained in the circular. But in reaching its conclusion the court overlooked the fact that the documents and statements which followed the submission of the circular to petitioner were in response to a request by petitioner for additional information and contained items of information not found in the circular.

Among them was the December 31, 1929, financial statement of the Long-Bell Lumber Company, the advertising map bearing a legend indicating the city's frontage on the river and the location of the taxing districts within the city limits, other advertising material containing pictures indicating the location of the Long-Bell and other plants within the city limits, and the statement made to petitioner by respondent's sales manager that the city, which was co-extensive with the improvement district had no funded debt. The court also failed to consider the question whether, under Iowa law, the hedge clause afforded to respondent protection from untrue statements recklessly made, whether the statements in the circular and others later submitted to petitioner were recklessly made, and whether the hedge clause itself contained

statements known to respondent to be untrue and had a material influence in inducing petitioner's purchase of the bonds.

It is obvious that the jury could have found that statements having persuasive influence in promoting the sale of the improvement bonds to the petitioner were, the statement as to the location along the waterfront and within the Improvement District of extensive manufacturing plants which would thus be subject to assessment for payment of the bonds, the statement that the city had no funded indebtedness other than the improvement bonds, and the representations as to the strong financial position of the Long-Bell Lumber Company which was guarantor of payment of the bonds. If, as the jury found, petitioner relied on these representations to its injury, it is immaterial as appears to be conceded, that petitioner did not make its own investigation to ascertain whether they were true. *Gardner* v. *Trenary*, 65 Iowa 646; *Creamer* v. *Stevens*, 192 Iowa 920; *Ford* v. *Ott*, 186 Iowa 820.

The trial court correctly charged the jury in accordance with the Iowa decisions, in substance, that as a prerequisite to a verdict for petitioner, it must find that the representations in question were known by respondent to be false or were made as true with no reasonable ground for believing them to be true, but that if they were believed by respondent to be true and were made without reckless disregard as to their truth or falsity, and without intention to deceive petitioner, petitioner could not recover. The question of respondent's recklessness was thus submitted to the jury and we think properly so upon the evidence. *Hanson* v. *Kline*, 136 Iowa 101; *Davis* v. *Central Land Company*, 162 Iowa 269; *Haigh* v. *White Way Laundry Co.*, 164 Iowa 143.

Respondent's witness, a vice president in charge of its municipal bond issues, testified that he assembled the data appearing in the circular submitted by respondent to petitioner without his ever having visited the City of Longview and without making any inquiry of the city officials or representatives as to the truth of the matters stated in the circular. So far as appears no such inquiry was made by respondent or in its behalf before the sale of the bonds to petitioner. The witness stated that he had obtained the information from the offices of the Long-Bell Lumber Company at Kansas City and Longview; that he had submitted the circular when prepared to the general counsel of the Long-Bell Lumber Company at

Kansas City, who had approved it. Whether counsel had any personal knowledge of the matters stated in the circular or what he stated to respondent with respect to it does not appear. The information about the 7¼ mile frontage of the city on the Columbia River and the location of the Long-Bell, Weyerhaeuser and other plants within the limits of the improvement districts was compiled by the witness from advertising copy suggested by the advertising manager of the Long-Bell Lumber Company. His recollection was that some of this information came from an address made "by one of the Long-Bell land agents at Longview".

No testimony was forthcoming to show that any executive officer of the Long-Bell Lumber Company gave assurances of the truth or accuracy of this information, or that any of them believed it to be true. When the witness sought this information in October, 1930, he promptly obtained the correct information from the Longview tax authorities. The evidence is conflicting whether this information ever was communicated to petitioner, and if so whether before its October purchase of the bonds. Petitioner's testimony was that it first acquired the information in June, 1931. Two of respondent's vice presidents had visited Longview two or more times in 1922 and 1924 in connection with the purchase by respondent of Long-Bell bond issues. Both testified as witnesses, but neither of them denied knowledge of the location of the corporate limits of the City of Longview and of the mill properties. Another vice president in charge of purchases of municipal issues had made a trip to Longview in 1925 and while there had entered into a contract with the Lumber Company for the purchase from it by respondent of the improvement bonds. He also arranged in that year for the purchase from Long-Bell Lumber Company by respondent of the diking district bonds, already referred to. This vice president, having died, did not testify, but there was testimony by his assistant and successor that the location of the diking district was ascertained by respondent at that time.

The only identified sources of respondent's information as to the location of the city on the river and the location of the manufacturing plants with respect to the taxing districts, were an advertising agent of the Long-Bell Lumber Company, a land agent acting either for the Long-Bell Lumber Company or its subsidiary, and a map with a descriptive material printed on it appearing as a

part of a published advertisement of the Longview Company which promoted the real estate enterprise in Longview. None of this information was verified by any responsible official of the Long-Bell Lumber Company nor by any official or representative of the City of Longview, and no such verification appears to have been sought by respondent. We think it was for the jury to say whether statements resting upon such flimsy support, made as the basis for a public offering of municipal bonds aggregating more than $3,000,000 were recklessly made, or were without reasonable basis for the assertion of their truth to prospective investors.

The court below thought the statement made by respondent's sales manager, despite the outstanding diking district bonds, that the city was without funded debt other than the improvement district bonds, was carelessly made but trivial in its effect in inducing the purchase of the bonds. But we cannot say that the trial court should not have left it to the jury to decide whether this statement was knowingly false or recklessly made, or whether in all the circumstances it materially influenced petitioner's purchase of the bonds. Moreover, we think that in all the circumstances of the case the trial court rightly left it to the jury to say whether in fact respondent in the course of its investigation, through its vice presidents or others, of issues of bonds totalling more than $30,000,000, issued either by the City of Longview or the Long-Bell Lumber Company or bearing its guarantee, became aware of the actual location of the properties in question.

Petitioner also insists that the jury could have found that the hedge clause itself was known by respondent to be untrue when made. The clause declared that the statements contained in the circular "are based on information which we regard as reliable and . . . we ourselves have relied upon them in the purchase of this security". Yet, respondent's vice president in charge of municipal issues, who had prepared the offering circular, testified, without contradiction, "We bought and sold the bonds solely on the guarantee of the Long-Bell Lumber Company paying no attention whatever to the valuation of the lands upon which the assessments were laid". Upon this state of the record the jury could have found that the hedge clause itself was untrue and would mislead prospective purchasers to the erroneous belief that Halsey, Stuart & Co. regarded the bonds as worthy investments on their merits either independ-

ently or in conjunction with the guarantee. It could have found also that its materiality was of added importance in influencing the sale of the bonds in view of the knowledge of respondent, not disclosed to petitioner, that the Long-Bell Lumber Company was already in financial straits.

While it is arguable, as the court below thought, whether in view of all the circumstances petitioner placed more or less reliance upon the obligations attaching to a municipal security on the one hand or upon the guarantee of the Long-Bell Lumber Company on the other, or whether it would have scrutinized more searchingly the guarantee had it known that respondent depended on that alone, these are arguments for the jury and not the court.

The court below held that the failure of respondent to reveal to petitioner its knowledge of the declining financial status of the Long-Bell Lumber Company, which respondent acquired in the early months of 1930, fell short of establishing fraud or breach of legal duty on its part. The court reached this conclusion on the grounds that there was no fiduciary relationship between respondent and petitioner; that the 1929 balance sheet of the Lumber Company was not shown to be an untruthful statement of the financial condition of the Company at that time; that respondent did not seek additional information as to the financial condition of the Company and if it had done so could readily have ascertained its condition from other sources.

But we think that, under Iowa law, these factors did not, in the circumstances of this case, relieve respondent of the duty to speak. As we have said, petitioner was under no duty to make an independent investigation of the truth of respondent's statements if, as the jury found, it relied on those statements in the purchase of the bonds. Respondent furnished the balance sheet in response to petitioner's request for information about the Lumber Company after emphasizing to petitioner the Company's guarantee of the improvement bonds and stating "we believe you have before you practically all the data covering this issue of bonds." From the evidence the jury could have found that the balance sheet was submitted to petitioner as one of the bases of the pending negotiation and as a representation, that it disclosed, so far as known to respondent, the financial condition of the Company, that notwithstanding such representation respondent

then knew that the Company's financial condition had so steadily and seriously declined after the date of the balance sheet as to impair substantially the value of the guarantee, and that this statement of a half truth had materially assisted in the sale of the bonds to petitioner.

The trial court instructed the jury.

"It is the duty of one selling securities who attempts to supply a prospective purchaser with facts concerning the issue not only to state truthfully what he actually tells but also not to suppress any facts within his knowledge which will materially change or alter the effect of the facts actually stated. To tell less than the whole truth may constitute a false and fraudulent representation. A partial and fragmentary disclosure of certain facts concerning an issue of securities accompanied by the willful concealment of material facts which change the facts actually stated, is as much a fraud as an actual positive misrepresentation".

By this instruction and others of like tenor the court left the jury free to apply to the evidence the generally accepted doctrine adopted by the American Law Institute, Restatement of Torts, §§ 529, 551. Section 529 states:

"A statement in a business transaction which, while stating the truth so far as it goes, the maker knows or believes to be materially misleading because of his failure to state qualifying matter is a fraudulent misrepresentation."

Such a statement of a half truth is as much a misrepresentation as if the facts stated were untrue. The court's charge was in conformity to Iowa law as disclosed by its judicial opinions. See *Howard* v. *McMillen*, 101 Iowa 453; *Noble* v. *Renner*, 177 Iowa 509; *Foreman* v. *Dugan*, 205 Iowa 929. No argument made or authority cited here persuades us that the Supreme Court of Iowa would, upon the evidence presented, apply any different rule. See *Wichita Royalty Co.* v. *City National Bank of Wichita Falls*, 306 U. S. 103, 107; cf. *West* v. *American Telephone & Telegraph Co.*, No. 44, decided December 9, 1940.

Respondent has raised numerous other questions which were not considered by the court below. This cause will therefore be reversed and remanded to the Court of Appeals for further proceedings not inconsistent with this opinion.

Reversed.